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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213057
Party	Plaintiff Hybrid Athletics, LLC
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Date	01/13/2016
Attachments	Notice of Filing.pdf(201740 bytes) Syncere Martinez.pdf(257814 bytes) Exhibits 1 - 9.pdf(4599805 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HYBRID ATHLETICS, LLC,	:	
	:	
Opposer,	:	Opposition No. 91213057
	:	
v.	:	
	:	
HYLETE LLC,	:	
	:	
Applicant.	:	

OPPOSER'S NOTICE OF FILING MARTINEZ TRIAL TESTIMONY

PLEASE TAKE NOTICE THAT pursuant to Trademark Rule 2.123(h) and 2.125(c),
Opposer files herewith the following:

1) A true copy of the transcript of the testimony deposition of Syncere Martinez, taken
on July 29, 2015, and all exhibits thereto.

Respectfully submitted,

HYBRID ATHLETICS, LLC

January 13, 2016

/s/ Michael J. Kosma
Michael J. Kosma
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing OPPOSER'S NOTICE OF FILING MARTINEZ TRIAL TESTIMONY was served by first class mail, postage prepaid on the Correspondent for the Applicant at the below address. This is to further certify that a true copy of the testimony deposition, taken on July 29, 2015, of Syncere Martinez and all exhibits thereto were served upon Correspondent for the Applicant via FedEx overnight delivery on August 20, 2015.

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221

January 13, 2016
Date

/s/ Joan M. Burnett
Joan M. Burnett

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

- - - - -x

HYBRID ATHLETICS, LLC,

Opposer,

Opposition No. 91213057

-against-

HYLETE LLC,

Applicant.

- - - - -x

DEPOSITION OF
SYNCERE MARTINEZ
Stamford, Connecticut
July 29, 2015

Reported By: Joe Danyo V

Job No. 14599

1
2 DEPOSITION of SYNCERE MARTINEZ, taken
3 pursuant to Order, held at the offices of
4 Whitmyer IP Group, 600 Summer Street, Stamford,
5 Connecticut 06901 on July 29, 2015, at 9:00 a.m.,
6 before Joseph Danyo V, a Shorthand Reporter and
7 Notary Public for the State of New York.
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APPEARANCES:

WHITMYER IP GROUP

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BY: MICHAEL J. KOSMA, ESQ.
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TSIRCOU INTELLECTUAL PROPERTY LAW

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BY: JOHN M. BEGAKIS, ESQ.

* * *

1 S. Martinez

2 S Y N C E R E M A R T I N E Z,

3 the Witness herein, having first been duly
4 sworn by the Notary Public, was examined and
5 testified as follows:

6 EXAMINATION BY

7 MR. KOSMA:

8 Q. Good morning.

9 A. Good morning.

10 Q. Can you please state your full name
11 for the record.

12 A. My full name is Syncere Martinez.

13 Q. And how do you spell Syncere?

14 A. S-Y-N-C-E-R-E. Last name is
15 M-A-R-T-I-N-E-Z.

16 MR. KOSMA: Can you identify
17 yourself, please.

18 MR. BEGAKIS: My name is John
19 Begakis. First name is spelled J-O-H-N.
20 Last name is spelled B-E-G-A-K-I-S. I'm
21 representing Hylete LLC.

22 MR. KOSMA: And we have Christina
23 Winsor.

24 Q. Mr. Martinez, I'm Michael Kosma. I'm
25 an attorney for Whitmyer IP Group, and I

1 S. Martinez
2 represent Hybrid Athletics in the matter against
3 Hylete.

4 This is a trial deposition in which
5 I'll ask you questions. You must answer them
6 truthfully.

7 Although no judge is present, this is
8 a formal legal proceeding, just like testifying
9 in court, and you are under the same legal
10 obligation to tell the truth, the whole truth and
11 nothing but the truth.

12 If you don't understand any of my
13 questions, please feel free to say so, and I'll
14 repeat or rephrase them. Before the deposition
15 can be used in court, you will have the
16 opportunity to read it over and correct any
17 mistakes.

18 Do you understand?

19 A. Yes, I do.

20 Q. Mr. Martinez, what is your address?

21 A. I'm at 800 Grand Concourse, Bronx,
22 New York 10451.

23 Q. And how old are you?

24 A. I'm 44-years-old.

25 Q. And what's your place of birth?

1 S. Martinez

2 A. Youngstown, Ohio.

3 Q. And what is your current job?

4 A. I'm self-employed.

5 Q. What is your main livelihood of being
6 self-employed?

7 A. I also run an apparel company, and I
8 have a coffee company and a gym.

9 Q. And what's the name of the coffee
10 company?

11 A. It's called afroBREWtality. It's
12 spelled B-R-E-W.

13 Q. Okay. And what's the name of your
14 apparel company?

15 A. Also, afroBRUtality. It's spelled
16 B-R-U.

17 Q. B-R-U?

18 A. Right, so the change is the brew.

19 Q. Okay. And you said you also own a
20 gym?

21 A. Yes. CrossFit Harlem.

22 Q. Okay. And when did you start
23 CrossFit Harlem?

24 A. In 2009. I was visited by Greg
25 Glassman, which is the founder of CrossFit. He

1 S. Martinez

2 came, personally, to Harlem to meet me, and he
3 invited Rob. He came as well.

4 Q. And who's Rob?

5 A. Rob Orlando.

6 Q. Okay.

7 A. At the time, Rob and I trained
8 together. So I invited everyone I knew to come,
9 because most people didn't know who he was and
10 never met him, so I made sure everyone I knew
11 would be there.

12 Q. To meet who?

13 A. Mr. Greg Glassman --

14 Q. Okay.

15 A. -- the founder of CrossFit.

16 So it went well. He was doing what
17 they call CrossFit 101, so he was kind of
18 explaining the origin of CrossFit, where it came
19 from, how he came up with the idea.

20 At the end, I got a call about two
21 weeks later, asking me why I was not a part of
22 CrossFit. And I said at the time I was having
23 some financial issue. So they sponsored me for a
24 number of years, so that I can be a part of
25 CrossFit. And that's when I started CrossFit

1 S. Martinez

2 Harlem.

3 Q. And so CrossFit or did -- was it
4 CrossFit who sponsored you or Mr. Glassman?

5 A. One and the same, I guess, if you
6 want to say that, but, yes. I mean he -- not
7 personally. His personnel made it happen.

8 Q. Okay.

9 A. So I guess you can say CrossFit.

10 Q. And what year did you start your
11 apparel company afroBRUtalidity?

12 A. November 2009. We did not become
13 incorporated until I have to say -- the exact
14 month escapes me, but it was 2010, so right
15 around probably March, April, May of 2010.

16 Q. And when did you start selling
17 clothing?

18 A. I started in 2009 selling the
19 clothing.

20 Q. Okay.

21 A. I had some friends over at a company
22 referred to as Life AsRx, who's also a CrossFit
23 brand, so at the time I just mixed the shirts
24 that I made for CrossFit Harlem with some of
25 their stuff. And I used to go to events and sell

1 S. Martinez

2 both right around, again, somewhere in 2010.

3 Maybe about maybe March, April, May.

4 I just started to sell afroBRUtalitY itself

5 without the CrossFit Harlem name.

6 Q. Okay. So it -- why did you sell it

7 without the CrossFit name?

8 A. Well, CrossFit is a licensed word, so

9 you pay an affiliation fee every year to market

10 and promote that word, so it wasn't really mine.

11 I wanted to create something that was totally

12 mine, and that's when I started experimenting

13 with not having the CrossFit name on the shirts.

14 Q. Are your shirts sold exclusively at

15 your CrossFit gym?

16 A. No. I have a little -- I have an

17 online situation, and then I have a few people

18 around the country that also help distribute the

19 apparel.

20 Q. And who's your clientele for your

21 apparel?

22 A. I mean it started off as exclusively

23 CrossFit. And then as CrossFit grew and as I

24 grew as a brand, it's, you know, everyday people,

25 all walks of life. Most of them do have some

1 S. Martinez

2 sort of fitness background or some kind of
3 fitness discipline that they adhere to, which is
4 why they usually buy just certain styles and
5 certain things that -- of the apparel that I
6 create.

7 Q. If you could define your clientele in
8 a class, what would it be?

9 MR. BEGAKIS: Objection. Calls for
10 speculation.

11 Q. You can answer the question.

12 A. I can answer that?

13 Q. Yes. I mean do you understand the
14 question?

15 A. I think I do. Are you asking like
16 demographics?

17 Q. Yes. What demographics do you sell
18 your apparel in?

19 A. My primary clientele is anywhere
20 between 30 and 45, mainly female, mostly
21 Caucasian, and that's pretty much where I --
22 that's my sweet spot.

23 Q. And you mentioned this is more of a
24 fitness clientele?

25 A. Yes. Everyone has some sort of

1 S. Martinez

2 fitness background. Even if they bought it for
3 their mother or their grandmother, that person
4 had some sort of fitness background.

5 Q. And you also mentioned you have a
6 coffee company named afroBREWtality.

7 A. That's true, yes.

8 Q. When did you start that?

9 A. I started that in November of 2014 on
10 Black Friday.

11 Q. And what made you start this brand?

12 A. I was doing some consulting with one
13 of the sort of fitness-related coffee companies
14 referred to as Caffeine and Kilos. I did their
15 social media for about a month or so, extendedly.
16 I just didn't like the way it was, so I would
17 send them samples every day, and then every
18 Sunday I used to do this like advertising. It
19 would say "afroBREWtality Smoke and Skulls Since
20 2008" or "afroBREWtality Dealing Skulls Since
21 2008," so I was doing a Google search.

22 I found a coffee cup with a skull in
23 it. I thought oh, this is kind of cool, so then
24 I said afroBREWtality like brew and skulls since
25 2008.

1 S. Martinez

2 At the same time, I was asphyxiated
3 with this movie called Team America. I don't
4 know if you've seen it. It's like a South Park
5 movie, and it's about terrorism and all that. So
6 one of their main themes was like everything was
7 fuck yeah. Fuck yeah. America fuck yeah.
8 Everything fuck yeah.

9 So I went with that and started
10 making things that said "Fuck Yeah," and the one
11 I made was a coffee mug, and the mug said
12 "Caffeine Fuck Yeah."

13 So it was my promotional thing that I
14 did to launch the brand at the CrossFit Games
15 last year, so I made a few boxes of coffee mugs
16 that said "Caffeine Fuck Yeah."

17 And at first we sold them, and then
18 we woke up Sunday morning, and we noticed we had
19 like at least two or three boxes left.

20 So I did this campaign, which is why
21 I'm wearing this shirt, and the campaign was: If
22 you could steal it from me without me catching
23 you, then you can have the mug. If I caught you,
24 you'd have to pay double for the mug, and then
25 they got a free shirt.

1 S. Martinez

2 So the shirt was either they either
3 had one that said "I'm a criminal," which means,
4 of course, they stole from me, and then the other
5 one was "I'm not criminal, but I just steal from
6 Syn."

7 So that was my launching of the
8 product itself, so it really started from the
9 coffee mug, and then I started to get phone calls
10 from people asking me if I have private label
11 with their coffee.

12 Q. So this was a promotional event you
13 did at the --

14 A. CrossFit Games.

15 Q. -- CrossFit Games, and where was the
16 mug that they would try to steal?

17 A. It was right out in the open.

18 Q. Okay.

19 A. Right on the shelf. We had one shelf
20 dedicated to all the mugs and tumblers that we
21 had brought for the event, and I actually just
22 went into another booth and just watched people
23 steal. It was kind of fun.

24 They were trying to -- you'd see them
25 try to do the slight of hand, and it was just

1 S. Martinez

2 fun, and it got a huge turnout.

3 Q. Really?

4 A. It was a very successful promotion.

5 Q. Did you catch anybody?

6 MR. BEGAKIS: Objection. Relevance.

7 A. No.

8 Q. No? So no one paid double?

9 A. It wasn't the point. The point was
10 for them to take it and feel like they had earned
11 something.

12 Q. Okay. As part of your brand, do you
13 have any words or slogans that are associated?

14 A. I do.

15 Q. What are some of those?

16 A. I coined the phrase "the fuck-up," so
17 I have like "Bearded the fuck-up." I have
18 "Gingered the fuck-up." I kind of coined that,
19 So I started that trend. And then
20 people started to kind of pick it up, and then
21 they would blurt out the word "fuck," because
22 most people don't like the word "fuck," so they
23 just kind of blurt it out.

24 I also have another one that says
25 "Unfuckwithable." I coined that. That was

1 S. Martinez

2 actually inherited from CrossFit. CrossFit had
3 it, and used it probably 2008, 2009. Maybe in
4 2007. And then as they became more mainstream,
5 they kind of cleaned up their image, so they got
6 rid of things like that.

7 And then one of the social media
8 directors for CrossFit, she had put this picture
9 of us working out. And at the time, we used to
10 work out outside in a park.

11 So a photographer was there. I had
12 two women. A man and a woman were working out in
13 the park -- which is more like a handball
14 court -- and then I had two women that were
15 watching them, and they had their back to the
16 camera, so one had a shirt on that said
17 "Unfuckwithable." The other one had a shirt on
18 that said "afroBRUtalility."

19 So, again, one of the social media
20 directors at CrossFit, she posted that with
21 something -- a phrase, you know, not for
22 conversation at your mother's house or something
23 like that.

24 And it just blew up. People kept
25 asking where is this unfuckwithable shirt? Where

1 S. Martinez

2 is this? Where is that?

3 So I contacted her and I said, you
4 know what I think I'm going to start doing that
5 again. And since 2010, I was doing that. So
6 we're known for the F word. We throw it
7 everywhere, and we're also known for that
8 particular phrase, "unfuckwithable."

9 Q. And that's one word?

10 A. That's one word.

11 Q. All right. And how do you spell it?

12 A. U-N-F-U-C-K-W-I-T-H-A-B-L-E.

13 Q. Okay. As part of your apparel
14 company and brand name, what are some of the
15 challenges of having an apparel brand?

16 MR. BEGAKIS: Objection. Calls for a
17 narrative.

18 Q. Just state a few of your --

19 A. I guess the main is originality.
20 It's kind of hard to -- in a free country, free
21 society, open market, free market, open source,
22 we all just kind of make these things up. At
23 least I do. I don't necessarily research them.
24 Right.

25 I kind of -- I saw this great movie,

1 S. Martinez

2 oh, wow. So if it's too hot then the wolves are
3 at the door and everyone is trying to take a
4 piece of it.

5 Like I said, I coined the word "the
6 fuck-up" right. So "Caffeine the fuck-up."
7 That's one of my phrases I use now for the
8 coffee. "Caffeine the fuck-up." I did "Beard
9 the fuck-up." I did "Ginger the fuck-up."

10 Now, you see shirts that say "Chalk
11 the fuck-up" or "Wake the fuck-up," whatever.

12 So the challenge is how do I separate
13 myself from them. How does it look like I'm the
14 first one who did this and not someone that went
15 behind them and also did it.

16 My longevity at CrossFit, it kind of
17 speaks for itself, so most people know that I
18 started that, but for someone that's brand new
19 let's say you came to CrossFit tomorrow and you
20 saw "Chalk the fuck-up" first before you saw
21 "Bearded the fuck," you may say, well, he did
22 what he just did oh, oh. So who looks like they
23 did it first?

24 Q. Right.

25 A. I mean that's the biggest challenge.

1 S. Martinez

2 The others are these are words, so it's very
3 expensive to try and trademark every single word
4 and slogan that I come up with, so I usually try
5 to go for the most popular.

6 Q. Okay. Have you filed trademarks?

7 A. I have.

8 Q. And do you own any trademarks?

9 A. I've had some challenges, but and I'm
10 still fighting those, because they're considered
11 obscene. Again, we coined the fuck -- we like
12 the word "fuck" so at least I do, so yes. I mean
13 I went for "Unfuckwithable" in 2012 and I had to
14 do some appeals and stuff like that to try to get
15 it through. It's still considered offensive.

16 Yes, but, of course, afroBRUtalitY
17 the logo I did, and I did another version of
18 "Unfuckwithable," and I also did two of my
19 coffees. I call my coffee "Black Cocaine," so I
20 did that. I trademarked it as coffee.

21 And then I came up with an apparel
22 line called "Black Cocaine Cartel," so it just
23 stays with the drug theme --

24 Q. Right.

25 A. -- of caffeine being a drug, but,

1 S. Martinez

2 yes. The biggest challenge is how do I separate
3 what I did, which was totally original, for
4 someone coming behind me and making it appear as
5 though they are also being original.

6 Q. So with the people coming secondary
7 to you, how does this affect your business? Do
8 you have any examples of how it's affecting your
9 business?

10 MR. BEGAKIS: Objection. Narrative.

11 A. Yes. I had to go against Reebok
12 recently.

13 Q. When you say go against Reebok, what
14 do you mean?

15 A. Well, they used the word
16 "Unfuckwithable" --

17 Q. Okay.

18 A. -- and they put it on a shirt. And
19 the funny thing about being in CrossFit so long
20 and being apart of the community is that the
21 community kind of fights for you. You don't
22 necessarily have to do a lot of the fighting on
23 your own, because you can't be everywhere at
24 once, you don't know what the hell is going on.
25 It's a big world. It's cyberspace.

1 S. Martinez

2 So when -- it was like Saturday
3 morning sometime in 2013. It was just about 7:30
4 in the morning. I had a picture on my phone, and
5 it had a shirt that said "CrossFit" and that it
6 said "Unfuckwithable" underneath.

7 So I was like, oh, what the hell is
8 this? So what's interesting is that CrossFit
9 sends me an e-mail every single year or they used
10 to. They stopped. That said I could not sell
11 that shirt at any event. I couldn't send that at
12 regionals. I couldn't sell it at the games,
13 because those are considered family events, and
14 that particular word or slogan is considered
15 offensive.

16 So I used to have to do all kinds of
17 things to continue to sell that shirt. I used to
18 have it in my truck in the parking lot, and then
19 I would have my son. He would we'd have to do
20 the woo-woo sign and you'd have to go follow my
21 son to go get the shirt and come back.

22 I used to have to do unfuckwithable
23 release parties in California before the games
24 and then after the games, because I couldn't sell
25 it onsite, just obeying the rules. I'm a big

1 S. Martinez

2 rule guy, so I like to obey the rules. So I,
3 okay, fine, I won't sell it.

4 So, yes, I could have sold a whole
5 lot more if I was just at open market at the
6 games or at regionals or something like that, any
7 CrossFit event. So, yes, it hit my numbers
8 pretty hard.

9 Plus, Reebok is a huge company. I
10 mean the last time they reported to me, probably
11 seven or eight months ago, they had already sold
12 5300 units. That's a lot. And I got a very, out
13 of the settlement, so to speak, I probably maybe
14 got 1 percent of that, at best. So you know it
15 hit me directly.

16 Plus, it looks like who did it?
17 They? Me? Did I do it first? Did they do it
18 first? Who owns this?

19 Q. So how did Reebok's use of
20 "Unfuckwithable" affect your sales?

21 A. Dramatically. I mean for the people
22 that knew me, they kind of dug -- I've been
23 selling it since 2010. So for the people that
24 already had bought from me they went and dug it
25 in there and they took pictures like Syn.

1 S. Martinez

2 See I've had it since 2010 and they
3 tried to establish that I was the first one to do
4 this, but, of course. I don't have the
5 wherewithal to sell that many units that fast.

6 Q. What prevents you from selling units
7 fast?

8 MR. BEGAKIS: Objection. Calls for
9 speculation.

10 A. I mean they have a huge
11 infrastructure. I mean thousands of employees.
12 So they can distribute onsite, or whatever. I
13 don't necessarily have that.

14 Q. You mentioned that you owned a gym,
15 CrossFit Harlem. Does your gym -- what kind of
16 events does your gym participate in?

17 A. Most local CrossFit events. I get
18 invitations all the time to sell the apparel
19 there, or wherever. So it used to be much
20 different in the day. You know, years ago it was
21 maybe five events a year that you would go to,
22 and there would be a ton of people there, so it
23 was a lot different.

24 Now, you can literally go to a
25 different event every weekend, so the demand is

1 S. Martinez
2 different, which means the penetration of people
3 there. The density of people is much smaller
4 than what it used to be. So, yes. I've been at
5 plenty of events, and it's based on those
6 invitations from other CrossFit.

7 Q. Now, is it strictly CrossFit events
8 you sell your apparel at or --

9 A. Onsite events, yes. I have not -- I
10 recently went to the ESPY's last month, and that
11 was the first kind of big event outside of
12 CrossFit I had ever done, so. But, yes, I'm
13 moving more into that direction.

14 Q. When you say the ESPY's, what is
15 that?

16 A. That's the ESPN award show.

17 Q. Okay. And what did you do there?

18 A. I was one of the celebrity gift
19 people. So I had the ability to give my stuff
20 away to top celebrities in the industry. Some
21 sports people. It was mainly a lot of actors and
22 directors and film people.

23 Q. What is the CrossFit community like?

24 A. It's changed over the years. When I
25 first got into it, it was like a real fraternity.

1 S. Martinez

2 It was like -- it was almost like an underground
3 fraternity. It was like, well, you do this. Oh,
4 I do it, too, kind of whispering.

5 And then as it grew, it became more
6 of a mainstream kind of thing where it's kind of
7 I don't want to say cliché, but it's sort of the
8 thing that people do right now.

9 It's mainstream and hot, and it seems
10 like it has some growth potential, even from
11 where it's at.

12 So at first it was just really small
13 underground who knows who that sort of thing, and
14 then it became like everyone pretty much
15 understands or at least knows what that word is.

16 Q. So you mentioned you sell clothing as
17 well as own a gym. Is that common for CrossFit
18 gyms to sell clothing?

19 MR. BEGAKIS: Objection. Calls for
20 speculation.

21 A. I'm sorry?

22 Q. Is it common for a CrossFit gym to
23 sell clothing?

24 A. Usually, they will sell just their
25 CrossFit name to their CrossFit members. It's

1 S. Martinez
2 not very common that a gym owner would create
3 their own brand and then sell it to the world, so
4 to speak. It's very common that a CrossFit gym
5 owner would sell CrossFit Stamford to CrossFit
6 Stamford members or people that came into
7 CrossFit Stamford.

8 It's not very common that they would
9 -- a CrossFit gym owner would create a brand, and
10 then sell it to the world that wouldn't -- that
11 doesn't have the word "CrossFit" in it.

12 Q. How many brands would you say you
13 have extended beyond the CrossFit gym?

14 MR. BEGAKIS: Objection. Calls for
15 speculation.

16 A. It's not very many. It's probably --
17 on the top of my head, I'd probably say -- I
18 would say four, but I'm not a hundred percent
19 sure if Caffeine and Kilos is actually a CrossFit
20 anything.

21 I know one of the owners does own a
22 CrossFit, but there's three owners. So most --
23 the other two are a little bit more weight
24 lifters. They're not necessarily CrossFit
25 people.

1 S. Martinez

2 Q. Okay.

3 A. So I don't know if I can give them
4 that credit for doing that. There's myself.
5 There's also Rob Orlando as well.

6 Q. And what brand is that?

7 A. Hybrid Athletics. There's another
8 one. There's a guy by the name of -- well, we
9 call him -- his name is James Fitzgerald, and he
10 has a brand called OPT, which he recently renamed
11 OPEX, so I know that's him.

12 CrossFit NorCal, even though they're
13 CrossFit, they seem to have more of a worldwide
14 appeal, rather than just their particular
15 CrossFit.

16 That's about it really. I can't
17 really think of that many. I don't -- there's a
18 lot of companies outside of CrossFit that are
19 selling to CrossFit, and there's a lot of --
20 there's not many organically grown through
21 CrossFit that's sold to CrossFit. There's only a
22 few. I would give Life AsRx that, too.

23 Q. Life Rx?

24 A. Life AsRx.

25 Q. Oh, Life AsRx.

1 S. Martinez

2 A. And I'd say Forged. I think Forged
3 started in a CrossFit gym. So, yes. Those, that
4 would be it.

5 Q. Okay. And you mentioned that you
6 sell apparel as well as own a gym.

7 How important is your apparel sales
8 to your business?

9 MR. BEGAKIS: Objection. Calls for
10 narrative.

11 A. They, usually used to go hand in
12 hand. Like there were times month in because
13 this is whether it's gym or apparel, it can be
14 filled seasonally. It would feel more like a
15 seasonal sale. Apparel is like shirts for awhile
16 and then tank tops and then long shirts and then
17 thermals and whatever, and the gym is like okay
18 everyone wants to get in shape in January.

19 They kind of disappear until June,
20 and then it's the summer. Got to get ready. And
21 then, you know, like they come back in the winter
22 oh, man, I gotta to do this or that. I just ate
23 all this turkey. So it's a fluctuating business,
24 both of them.

25 The good part is having them hand in

1 S. Martinez

2 hand. It's almost like a perfect marriage,
3 because people come in the gym. They get sweaty.
4 Oh, I gotta go see my girl. I gotta go to a
5 dinner. Oh, can I get a shirt? Oh, of course,
6 yes. Absolutely.

7 And then it's good for the
8 out-of-towners. People come from out of town.
9 Hey, I want to take a shirt as a memento as a
10 blah, blah for my son, my mother, my other
11 CrossFit gym guy, whatever.

12 So there's times that the gym takes
13 care of the apparel and there's times the apparel
14 takes care of the gym. So there's never one
15 that's just like skyrocketing and the other is
16 just plummeting. They kind of just balance each
17 other out. I will say it's hard to do one
18 without the other. It's way difficult.

19 Q. You mentioned Rob Orlando. How do
20 you know Rob?

21 A. I met Rob in 2009 at the CrossFit
22 Regionals in Albany, New York. At the time, he
23 was just another guy. He wasn't a big deal.
24 Then I started, you know, Facebook started to get
25 a little bit hotter and people started posting

1 S. Martinez
2 videos and stuff. And he would post these
3 ridiculous videos of ridiculous amounts of weight
4 at the time. And at first, I was just kind of,
5 like, who is this guy?

6 Then he'll put out an invitation to
7 do a Strongman competition, like a CrossFit
8 Strongman kind of competition, and on there --
9 you went to the website.

10 The website said, hey, if you've
11 never done this before, you need to really try
12 it. So if you want to try it, we have Saturdays.
13 You can come and try it.

14 So I kind of told my crew at the
15 time, hey, let's go try this. See what you
16 think. So we all got in my car and we drove here
17 in Stamford and went to this gym and just started
18 playing with sandbags and kegs and all the other
19 stuff, and it was pretty cool.

20 Rob and I hit it off, just based on a
21 lot of similarities, the way we trained, the way
22 we talk, you know, our outlook on life, different
23 stuff. So we started doing what they call
24 coaches. Like we did Tuesdays and Thursdays is
25 like coaches day. And then we did like --

1 S. Martinez

2 Q. Where was that?

3 A. This was at Rob's place, Hybrid
4 Athletics.

5 Q. Okay.

6 A. And then we did Friday. We would do
7 what they call -- Friday we call it "Beast of the
8 East," and we meet at CrossFit Milford in
9 Milford, Connecticut. And it would be everybody.
10 It would be me, Rob. It would be people from
11 CrossFit New England.

12 People from all over would just bring
13 their best, and we all just hammered it out for
14 several hours and have fun.

15 Q. And this was every Friday?

16 A. This was every Friday.

17 Q. And was it a competition or --

18 A. No. It was just like a friendly
19 let's go let's throw down, let's see how we do
20 together. It was almost like a picnic. I don't
21 know how to describe it.

22 We just all, hey, where you all going
23 to be? Hey, let's go to Milford. And we all
24 went to Milford, we called it "Beast of the
25 East," and it was pretty much the Best of the

1 S. Martinez

2 East.

3 And then we do Tuesdays and Thursdays
4 at Rob's, kind of like a coaches thing. So a
5 bunch of the coaches in the area that like that
6 type of training, which was kind of new for us,
7 not just for CrossFit but most of us in general
8 had never did most of this stuff. So we just
9 meet there on Tuesdays and Thursdays, figure out
10 what kind of workout we were going to do, do it
11 and go.

12 Q. And where would people come from for
13 these events?

14 A. I mean we've had Boston, Connecticut,
15 Maine. People were coming in from out of town,
16 visiting other people. They would find out and
17 come, hang out.

18 It was always a big thing and it was
19 always like if you got an invite, you felt like
20 you were one of the cool kids, you know what I
21 mean. So it was fun.

22 Q. And after 2009, did you and Mr.
23 Orlando's relationship extend to 2010?

24 A. It did. We used to do this
25 competition. So he did a fall I think it was

1 S. Martinez
2 called like a fall something or other. Then he
3 had like a spring something or other. And a
4 summer something or other.

5 Q. These are competitions or --

6 A. Correct. These were like Strongman
7 competitions. I continued my Tuesdays and
8 Thursdays and did my Fridays. It was just fun,
9 new, fresh, exciting, and we all enjoyed it.
10 But, yes, it extended to 2010.

11 Q. In your opinion, what is Mr.
12 Orlando's connection to CrossFit?

13 MR. BEGAKIS: Objection. Calls for
14 speculation.

15 A. Well, Rob is considered the CrossFit
16 Strongman. He's considered-- even though
17 CrossFit already had someone that was teaching
18 Strongman classes, he was like in Washington
19 state, like really out of the loop and not very
20 personable, not a very interactive kind of guy.

21 When Rob came on the scene, he was --
22 even though he was an older gentleman, he was
23 still doing what the younger kids can do, and
24 sometimes even better.

25 Q. What do you mean by doing what the

1 S. Martinez

2 young kids could do?

3 A. Well, you know, like in terms of
4 weights, in terms of being able to run and all
5 the stuff that makes you a good CrossFit athlete.
6 You know that was usually reserved for the young
7 or the younger, so to speak, and though he had
8 some age on him, he still could keep up,
9 sometimes outrun them or outperform them. So he
10 was considered the CrossFit Strongman.

11 He was the one that really embraced
12 CrossFit and Strongman. He still did Strongman
13 competitions. He still did CrossFit
14 competitions, videoed most of it, shared some
15 techniques with everyone. That sort of thing.

16 Q. When you say videos of his
17 techniques, what kind of videos did Rob post?

18 MR. BEGAKIS: Objection. Relevance.

19 A. Everything. What he did that
20 morning; what he did that afternoon; what he did
21 that night; different techniques on flipping a
22 tire; on picking up a stone. Different
23 programing techniques. He videoed everything.
24 That was his thing. He videoed everything.

25 Q. So these are different kinds of

1 S. Martinez

2 weight lifting --

3 A. Correct.

4 Q. Okay. How popular were these videos?

5 A. Very. So much so, they kind of -- I
6 don't know what the right word would be -- but
7 2010 it was like Rob owned CrossFit.com, because
8 you would see a video from him at least once a
9 week. Sometimes twice a week. And this is
10 because he was doing things no one was doing at
11 the time, whether it was you know based on the
12 amount of weight he was able to lift or based on
13 the longevity of lifting that much weight for
14 that long.

15 He did a video that I, you know, Rob
16 and I used to -- I used to tell him I was going
17 to make fun of him, just to make him more
18 popular. So he did this workout with one arm.
19 Like he did pullups with one arm. And he did
20 thrusters with one arm.

21 And I posted on Facebook who is this
22 guy? Who does he think he is this dick head? So
23 we kind of did that. That was his thing. He
24 liked me for street cred.

25 I had a team from Harlem. We were

1 S. Martinez

2 all street cred, and Rob was just cool to hang
3 out with. That's my dude.

4 MR. KOSMA: I'm going to mark this as
5 Exhibit 1 put it into evidence.

6 (Whereupon, Hybrid Exhibit 1,
7 document consisting of logo for Hybrid
8 Athletics was hereby received in evidence,
9 as of this date.)

10 Q. Mr. Martinez, this has been marked as
11 Exhibit 1. Do you know what this is?

12 A. Yes.

13 Q. What is this?

14 A. This is the logo for Hybrid
15 Athletics.

16 Q. And you mentioned Rob. How well
17 known is this logo?

18 MR. BEGAKIS: Objection. Calls for
19 speculation.

20 A. It's very well known.

21 Q. You mentioned earlier that there's
22 approximately seven brands that are very well
23 known across the CrossFit community. Is this one
24 of them?

25 A. Yes.

1 S. Martinez

2 Q. Where have you seen the Hybrid
3 Athletics H?

4 A. On videos. I've seen it on pictures.
5 I've seen it on apparel. I've seen it -- let's
6 see. Some are not random. I mean I've seen it
7 everywhere.

8 Q. Have you been around when the H brand
9 has been sold?

10 MR. BEGAKIS: Objection. Calls for
11 narrative.

12 A. Yes.

13 Q. What events have you been at?

14 A. Rob and I did an event together. He
15 had his own booth. I had my own booth. It was
16 my first booth.

17 We were at CrossFit Milford in 2010,
18 so I was on one side of the parking lot. He was
19 on the other side of the parking lot, and he sold
20 it on Atlas Stones. He sold it on logs. He sold
21 it on shirts, what have you.

22 Q. Besides being a Strongman, what else
23 makes Mr. Orlando famous in your opinion?

24 MR. BEGAKIS: Objection. Calls for
25 speculation.

1 S. Martinez

2 A. I mean he's just tangible, right,
3 he's able to, you can talk to him. There's some
4 people you mean and you can't really talk to
5 them. They're socially awkward. They can't
6 really hold a conversation if it has nothing to
7 do with fitness. And with Rob, you can hold a
8 conversation with him.

9 Q. Was Mr. Orlando ever ranked in the
10 CrossFit community?

11 A. What do you mean?

12 Q. As an athlete?

13 A. Well, he won our regionals, if that's
14 what you're saying. So he was a top competitor
15 of 2010, which, well, he was top competitor 2009.
16 I think he came in third or fourth place and he
17 went to the CrossFit Games 2009. Then in 2010 he
18 was also a top competitor and he won that
19 regionals that year and went to the games. At
20 the games he ranked 16th. I mean he's known as a
21 top CrossFit competitor.

22 Q. And at these events, do you see the
23 Hybrid Athletics H?

24 A. Yes.

25 Q. Is it fairly popular in your opinion?

1 S. Martinez

2 A. Yes. It's very popular.

3 Q. What is the importance of having a
4 brand CrossFit?

5 MR. BEGAKIS: Objection. Calls for
6 speculation.

7 A. It's very important. As I said
8 before, in terms of originality, to have an
9 identifying mark that says this is me, right. So
10 me, I'm all over.

11 I'm not necessarily all over, but
12 it's hard to settle on one image, right. I make
13 -- I've made hundreds or even maybe up to a
14 thousand different images. And it's hard to say,
15 okay, this is the image that everyone is going to
16 love, right, you just never know.

17 I will say the first image I ever
18 made I still can't stop selling that damn thing
19 and I've tried to outdo it and I can't outdo it
20 and it pisses me off.

21 So if you can find something that you
22 can settle on and you feel good about and you can
23 get behind with, you know, trademark and
24 illustration and all that, go for it.

25 And I used to tell Rob like for a

1 S. Martinez
2 while he was trying to call his CrossFit Conan or
3 something, and I was like that's dumb just stick
4 with Hybrid, what's wrong with you? The H is
5 synonymous. You know that. What's the point?
6 You've taken this much time to brand that thing.
7 Just keep going. What's the problem.

8 He wanted something with a CrossFit
9 name in it, and I get it. It can bring a coin or
10 two, but it's much more important that if you
11 find something that you really -- that you really
12 like and that people can get behind, that you
13 just blow that thing out as much as you possibly
14 can.

15 Q. So you mentioned you advised Rob on
16 his branding. How would you consider yourself an
17 advisor to Mr. Orlando?

18 A. I mean we just shared stories. When
19 I met him in 2009, I had already been doing
20 CrossFit for two years. I understood where it
21 was going. I've been a -- I was in corporate
22 sales for 25 years, so I understood like B to B
23 and direct sales and direct sales, customer
24 service, blah, blah, blah.

25 So it was very important that if he

1 S. Martinez

2 -- once he started putting the H out there, it
3 was very important for him to just continue that
4 and not change it at all. And everything -- I
5 even did some designs for him as well, some of
6 his first designs.

7 And I made sure, even on the CrossFit
8 Conan shirt you'll notice if you ever see it, it
9 actually has the H on everything, so there is an
10 H on the little Atlas Stone and an H on the
11 little log on all that.

12 I was a very big believer and pusher
13 of that, only because with me, again, I made at
14 least a thousand different designs, and it's hard
15 to really wrap your head around, well, this is
16 the -- is this the Nike's swoosh? Is this what's
17 going to take me to the next level? Is this
18 something that can stand the test of time?
19 Because I'm not a hundred percent sure, but this
20 is all he had. And I was like this is all you
21 got and you better just go balls to the wall with
22 it.

23 Q. You mentioned Mr. Orlando is the
24 CrossFit Strongman. What does that mean?

25 A. Well, that's how they refer to him,

1 S. Martinez

2 again. He actually tried to at first call his
3 gym CrossFit Strongman, but then there was some
4 pushback from the word "Strongman" which is
5 really more of a registered and licensed thing.
6 They have their own competitions, their own
7 legislated body blah, blah, blah.

8 So he wasn't able to get that done,
9 so he came up a bunch of different names and he
10 just named it after his dog, Conan, but when it
11 came to a full blown merger of CrossFit and
12 Strongman, he was the guy.

13 He's the guy that did that. He was
14 the one that taught people how to flip tires.
15 Not just in his gym, but would make a video. The
16 video would be on CrossFit. He was always
17 synonymous with anything that was Strongman. He
18 was referred to as the CrossFit Strongman.

19 Q. How does Mr. Orlando use the Hybrid
20 Athletics H with the Strongman brand?

21 MR. BEGAKIS: Objection. Calls for
22 speculation.

23 A. He puts it on everything. It's on
24 the Atlas Stone, so it's in the mold. So as you
25 drop a mold -- as you drop cement into the mold,

1 S. Martinez

2 the H comes out right on top. He puts it on
3 shirts, hats, shorts. You name it.

4 He wanted to make sure, you know, I'm
5 not going to say that I'm the one that told him
6 to do that, right, but I am going to say that I
7 definitely tried to encourage that as much as
8 possible.

9 Q. You mentioned CrossFit as going
10 mainstream. Is Rob a part of that?

11 A. Hard to say. Him and I, we're like
12 -- we get the diehards. I get the kids, because
13 I use the F word, and no one really does, but I
14 get a lot of the kids. I get a lot of the next
15 generation.

16 Rob got the diehards. You know he's
17 got the soccer moms. He's got the -- the soccer
18 moms have never lifted a tire before. He's got
19 them and the Atlas Stones and all that. It was a
20 hard nut for him to crack was to get the chicks,
21 because they didn't want to pick up rocks and
22 flip tires, and he did everything he could to
23 make that happen.

24 You know he tried to hire chicks to
25 do the women hour, and all that. And now you see

1 S. Martinez
2 the videos with a lot of chicks lifting stuff,
3 but it was tough. It was tough in the beginning.

4 It was all -- it looked male
5 dominated. And at the time before he started
6 making his own stone molds, we used to have to
7 use Slater -- which is just a company -- but we
8 used to, the way Slater was, is you only had
9 certain diameters of stones that you could make.

10 So if you wanted to make it lighter,
11 you'd have to put Styrofoam in the middle or
12 something of lighter nature that would bond with
13 the concrete itself.

14 When he finally took the hit and made
15 his own mold, it was big. It was huge, because
16 now you can make solid pours and solid balls or
17 solid stones.

18 You can drop them a little bit more,
19 and they would last a little bit longer than
20 having something like a Styrofoam in the center
21 that can easily, based on the right vibration or
22 the way you dropped it, could create a crack from
23 the middle out, so, yes.

24 Q. And so these -- what was the
25 importance of the stone molds?

1 S. Martinez

2 A. I mean it was -- it kept with, you
3 know, if there's anything I told Rob, I told Rob
4 stick with Strongman. Like don't try to reinvent
5 the wheel. Just do what you do. Do it best.
6 Show people what it means to be a Hybrid Athletic
7 or Hybrid Athlete, so to speak, because that's
8 what he was-- that's what he always referred to
9 as, you know, like the Hybrid Athlete, meaning
10 you could do Strongman. You could do CrossFit.
11 You could do whatever you wanted, right. You
12 were that Hybrid Athlete, so to speak.

13 And I told him to just keep pushing
14 that. Don't worry about anything else. Let the
15 noise cease. Just keep pushing that.

16 And I would talk to him about
17 starting a Strongman starter kit, so to speak,
18 where you would get a stone and a log and a yolk,
19 so to speak, but, yes.

20 It was -- for me, it was just
21 swapping stories with him, because, again, I'm a
22 little bit more scatterbrained than he is. I've
23 done triathlons for years. I've ran for years.
24 I was doing Strongman with him. And then I did
25 CrossFit on my own, so to speak. So I didn't

1 S. Martinez

2 necessarily find that one path, oh, go.

3 So to see someone that was on one
4 path, and I was like just keep going. Don't be
5 me. Like I'm all over the place. Stick with
6 that.

7 MR. KOSMA: I am going to mark this
8 as Exhibit 2.

9 (Whereupon, Hybrid Exhibit 2,
10 photograph was hereby received in
11 evidence, as of this date.)

12 Q. Mr. Martinez, this has been marked as
13 Exhibit 2. Have you seen this image before?

14 A. Yes. It's on the wall at the gym.

15 Q. And what is across the bottom there?

16 A. Those are the stones. It's different
17 diameters, which reveal different weights.

18 Q. And you mentioned that Hybrid
19 Athletics H is on each one of those stones;
20 correct?

21 A. Right. It comes right out in the
22 mold.

23 Q. And how widely used are these stones?

24 A. Very. Most gyms have at least a few.
25 And that was the thing that I could see

1 S. Martinez

2 happening, right, I could see that, you know,
3 fitness people, we get bored and we want to try
4 something new.

5 So I personally did triathlons for
6 five years, and I got bored. I found CrossFit.
7 I did that for a while. Then I was, like, okay,
8 what's next. Then I found, Rob, I did that for a
9 while. Okay, what's next?

10 Like we always kind of like were ever
11 evolving and changing. At least most of us.
12 Some of us do not. But this is right on the gym.
13 This is right on the wall in the gym. And most
14 people that come from out of town take a picture
15 with it.

16 You know I was at Hybrid, click,
17 click. That sort of thing. They used to do the
18 same thing for me. When they came to my gym, I
19 had a big skull on the wall. They'd come take a
20 selfie. I was in Harlem, click.

21 Q. Why do you think people take a
22 picture with the H?

23 MR. BEGAKIS: Objection. Calls for
24 speculation.

25 A. They just want to show that they were

1 S. Martinez

2 there, that they you know took their seminar with
3 Rob. They met Rob. It was -- it's a big thing
4 to meet Rob. I run into that, too. And it's
5 weird, but you gotta to give the people what they
6 want.

7 So it's a big thing to go all the way
8 to Stamford -- and he's in the same place that he
9 started, which is awesome. He even knocked the
10 wall down, so this is the second H.

11 There's another one to the left of
12 this picture. That was the first one, and that
13 was -- probably been there since 2008, when he
14 first opened. It was on a little pegboard that
15 he had.

16 Q. When did you first see the H at Rob's
17 gym?

18 A. When I -- well, I didn't see it when
19 I met him. I saw it when I got to the gym, so
20 2009.

21 Q. 2009.

22 You mentioned seminars. What are
23 those?

24 A. So you know, again. Me just trying
25 to talk to Rob about, hey, things that I would do

1 S. Martinez

2 if I could. And one of them was, listen, man,
3 you need to teach other people how to do this.
4 You're doing some online stuff and some videos,
5 but what if you could actually go to their gym
6 and teach them how to do this. So he -- I kind
7 of wanted him to do it on his own, but he wanted
8 to go to CrossFit.

9 So he did anything they asked him to
10 do to become what they call an SME, which is a
11 specialist in a particular field. Because he's
12 considered a specialist in Strongman that he
13 would be the right man for the job to teach
14 Strongman to groups of people.

15 And he's gone everywhere. He's gone
16 overseas many times, Europe, Australia, New
17 Zealand. Of course, in the states as well, and
18 he did it smart.

19 At first he kind of went out there
20 campaigning. And then he would make people come
21 to him and go to the gym. And they felt special
22 being able to meet Rob or take a picture with the
23 H or whatever. It just became synonymous with
24 everything Rob stood for.

25 Q. So these seminars where are they

1 S. Martinez

2 usually held?

3 A. So they're periodically held whomever
4 signs up. So usually, and I would, you know,
5 heard some of these first conversations. Some of
6 them hearsay. Some directly. But it was trying
7 to figure out how to get all that Strongman
8 equipment to a gym that you can hold a seminar.

9 So before it became popular to have
10 stones and logs and stuff, you used to have to
11 ship them to places to do the seminar. Or find a
12 person or another Strongman person that was local
13 to wherever that seminar could be held, and then
14 pick the stuff up and drop it off later that day
15 or the next day. So they could be anywhere.

16 Again, he did a European tour, but by
17 then, there was enough equipment out there that
18 he could just go to a gym, and they would have
19 everything he needed to teach someone how to do
20 Strongman elements.

21 Q. So is Strongman now a part of
22 CrossFit?

23 A. It is.

24 Q. And what sort of equipment is used in
25 the Strongman-type exercise?

1 S. Martinez

2 MR. BEGAKIS: Objection. Relevance.

3 A. The stone is big, so the Atlas Stone
4 you'll see a lot. So much so, that companies
5 like I think Rogue and maybe even Muscle Driver
6 made like actual more plastic or not plastic, but
7 a more durable texture to it, where you can
8 literally drop it and it wouldn't break.

9 Some refer to them as slam balls, or
10 whatever, and those weights used to just go to
11 50. Now, they go up to like damn near 200,
12 300 pounds, and it's pretty much the equivalent
13 of an Atlas Stone. Usually the same size.
14 Definitely it's almost the same equal toughness
15 to get that thing up. So, yes, he's been
16 everywhere with this. Definitely been around the
17 world at least twice. Maybe three times.

18 Q. Do you go to a lot of CrossFit gyms?

19 A. Definitely.

20 Q. How often do you go -- well, how many
21 gyms do you think you've visited in CrossFit?

22 A. I don't know. Maybe 200.

23 Q. 200. And where do you travel to go
24 to gyms?

25 A. Tri-state. I've gone as far as

1 S. Martinez
2 California, Florida, Phoenix, Austin, Chicago,
3 all the Virginias. That sort of area. I haven't
4 been to Maine, but everything around Maine or New
5 Hampshire. I haven't been to New Hampshire
6 either, but mostly Northeast, a little bit of the
7 West and Down South as well.

8 Q. Do you see Strongman equipment at
9 these gyms?

10 A. I do.

11 Q. Do you see the Hybrid Athletics molds
12 at the gyms?

13 A. Yes.

14 Q. Approximately, how many of those gyms
15 would you say have the Hybrid molds?

16 A. The bigger gyms all have them, so if
17 it's a smaller gym, they're not going to have
18 them. They're just going to have the standard
19 CrossFit equipment, but the bigger gyms all have
20 Atlas Stones.

21 Also, the big thing is axles. So
22 more of a thick bar rather than a thinner
23 barbell. That's also considered Strongman.

24 Tires, I don't know if I can
25 attribute that to Rob, but he did teach how to do

1 S. Martinez

2 that effectively. Not just muscling it up. So,
3 yes, all the bigger ones have it. All of them.
4 They all have at least some stones, yoke, log and
5 axles and what they call farmer carry, and those
6 are all considered elements of Strongman.

7 Q. So you mentioned you went to
8 approximately 200 gyms. How many events have you
9 been to for CrossFit?

10 A. Maybe 300, 400.

11 Q. And how many events outside of
12 CrossFit events?

13 A. Probably one or two. Well, I did
14 some OCR events now that I think about it, so
15 maybe six.

16 Q. What is OCR?

17 A. Obstacle course racing.

18 Q. Okay. In visiting these 200 gyms
19 approximately 300 shows or events, how often do
20 you see the Hybrid Athletics H?

21 A. I used to see it a lot. I used to
22 kind of you know I felt good about it, but then I
23 was like damn this is my event. What the hell is
24 this shit doing here?

25 And he always had like prominent

1 S. Martinez

2 standing in the CrossFit games, like, he would be
3 in the what they call the tennis stadium, so
4 that's where the majority of people would go to
5 see the last event or the first event. That sort
6 of that thing. And that's because he was a part
7 of the CrossFit network in terms of seminars and
8 stuff like that. So I felt like there's times
9 where it was like I would see it too much, and
10 then there was times I was happy to see it.
11 Depends on what the event was, and what's going
12 on that day.

13 Q. So would you say you see it a lot?

14 A. I -- yes. I used to see a lot more
15 than I do now, but, yes. I used to see it a lot.

16 (Whereupon, a short recess was
17 taken.)

18 (Whereupon, Hybrid Exhibit 3, Hybrid
19 Athletics shirt was hereby received in
20 evidence, as of this date.)

21 (Whereupon, Hybrid Exhibit 4, JACO
22 shorts was hereby received in evidence, as
23 of this date.)

24 Q. Mr. Martinez, I'm going to put
25 Exhibit 3 into evidence.

1 S. Martinez

2 Have you seen that before?

3 A. I have.

4 Q. What is that?

5 A. This is the Hybrid Athletics shirt.

6 Q. Where have you seen that before?

7 A. Everywhere. It's the first shirt he
8 made. I hated it.

9 Q. What year was that?

10 A. It's 2009. I convinced him to do
11 something a little bit more sexy, because it -- I
12 don't like this shirt.

13 Q. I'm going to put into evidence
14 Exhibit 4, and what is that?

15 A. These are the JACO shorts.

16 Q. And what branding is on the shorts?

17 A. Hybrid Athletics and JACO.

18 Q. You mentioned you saw the shirt first
19 in 2009. Where would you see that shirt in 2009?

20 A. He wore it almost every day, and then
21 people in his gym bought it. A lot of people
22 liked it. He sold a lot of them.

23 Q. Where did you see this shirt sold?

24 MR. BEGAKIS: Objection. Leading the
25 witness.

1 S. Martinez

2 A. It was at events we went to he would
3 sell it. Or events I saw him at he would sell
4 it. He sold it online. He pushed this thing.

5 Q. What were some of the bigger events
6 you saw the shirts sold at?

7 A. CrossFit Regionals. CrossFit Games.

8 Q. What years were those?

9 A. Oh, I'm sorry. 2010, 2011, and I
10 also -- I think every year, as a matter of fact.
11 I don't think he went last year to the CrossFit
12 Games. He said he was going to take a year off
13 or something like that, but, yes. Every year at
14 the CrossFit Games.

15 Q. Just that shirt or would you see
16 other shirts as well?

17 A. There were others. He did other
18 colors and styles and stuff.

19 Q. What was common with all the shirts
20 you saw?

21 A. The H and the Hybrid Athletics.

22 MR. KOSMA: I'm going to mark into
23 evidence Exhibit 5.

24 (Whereupon, Hybrid Exhibit 5, Muscle
25 & Fitness article called "The King of

1 S. Martinez

2 CrossFit" was hereby received in evidence,
3 as of this date.)

4 Q. Mr. Martinez, can you take a minute
5 to review this document, please.

6 A. Oh, sure.

7 Q. Mr. Martinez, what is this document?

8 A. This is Muscle & Fitness.

9 Q. And have you seen this before?

10 A. I have.

11 Q. And what is this Muscle & Fitness
12 article about?

13 A. It's about Rob. It's called "The
14 King of CrossFit." I didn't really read it. I
15 just kind of browsed through it, yes.

16 Q. If you can turn to -- it says Hybrid
17 000054.

18 A. Okay.

19 Q. Is this what you're referring to as
20 The King of CrossFit?

21 A. Yes.

22 Q. Now, at the time -- this article is
23 from July 2011. Do you remember when this
24 article came out?

25 A. I do.

1 S. Martinez

2 Q. What do you remember about it?

3 A. People telling me, tagging me,
4 calling me, asking me if I had seen it.

5 Q. What was the magnitude of the people
6 that were sending you this article?

7 MR. BEGAKIS: Objection. Calls for
8 speculation.

9 A. Well, before he actually got the
10 article, he campaigned, because it was a choice
11 between him or someone else. So he had to do a
12 small campaign to get people to vote for him to
13 be in the magazine. So that's where it started.

14 And then, clearly, he won, because he
15 was in the magazine, but it started off as some
16 sort of almost like a contest, you know, hey can
17 you help me get into Muscle & Fitness, and then,
18 clearly, he won.

19 Q. Did you help him with his campaign?

20 A. Not really. I mean this is 2011.
21 Rob and I had some issues in 2010. We kind of
22 went our separate ways, business-wise, in 2010.
23 So this was kind of like, you know, it's great to
24 see him doing well, but it wasn't like oh, man.
25 Let me push for Rob. It was, that's cool.

1 S. Martinez

2 Q. So at the time of this article, you
3 and Rob weren't speaking at the time?

4 A. Not about anything of a business
5 nature. Just maybe more like, hey, if we saw
6 each other in passing or, hey, I might be at that
7 event, are you going to be at that event? Yes.
8 What do you usually bring to that event? I might
9 bring this. That's about it.

10 Q. How well known was this article at
11 the time?

12 A. It was the biggest thing happening in
13 CrossFit, because it, you know, the thing about
14 CrossFit was, again, it was like a very small
15 fraternity. A few people knew a few other
16 people, and it wasn't really that big.

17 This was -- at the time, this was the
18 biggest thing to see the word "CrossFit" and a
19 CrossFit person in a more mainstream magazine was
20 a big deal, huge deal.

21 Q. When you say more of a mainstream
22 magazine, what do you mean?

23 A. Meaning, it wasn't CrossFit -- there
24 are a lot of CrossFit magazines that all they
25 preach is CrossFit, so this was a non-CrossFit

1 S. Martinez

2 magazine with CrossFit in it.

3 Q. At the time, why do you think Mr.
4 Orlando was referred to as The King of CrossFit?

5 MR. BEGAKIS: Objection. Calls for
6 speculation.

7 A. I mean Rob could do it all. We -- he
8 had some weaknesses in his running. He got a
9 running coach, and he could run fast. He was
10 pretty much considered one of the strongest in
11 CrossFit. The weights he was doing, no other
12 person was doing. The things he was doing --
13 because you got to understand, he wasn't just
14 doing CrossFit. There would be videos of him
15 ripping phone books in half.

16 It would be -- he just -- and him
17 being -- again, this is 2011. He was on
18 CrossFit.com. In terms of a video, the way
19 CrossFit works is they will give you the workout.
20 Then sometimes they will give you an
21 instructional video to help you with the workout.
22 Sometimes it will just give you a highlighted
23 video of someone who did the workout. And Rob
24 was always on that thing. Always. Consistently.

25 Q. If we look at pages marked Hybrid 55

1 S. Martinez

2 through 59, I noticed -- well, Mr. Orlando, he's
3 wearing Hybrid in many of the pictures; is that
4 correct?

5 MR. BEGAKIS: Objection. Leading the
6 witness.

7 A. Yes. Every picture. It's even on
8 the keg.

9 Q. All the pictures of Rob, what do you
10 notice first?

11 A. Some of them, well--

12 Q. Looking at let's say page 55, what do
13 you notice first about Mr. Orlando?

14 A. Well, since I know him I'm trying to
15 figure out where he's at. Oh, yes he's in the
16 gym you can tell because of the way the rope the
17 rings are held.

18 Then of course you notice the H. And
19 then I'm trying to figure out what that says on
20 his shorts. It looks like it says "Fitness," so
21 it's not his shorts that he's wearing. It looks
22 like ASICS.

23 Q. Would you see a lot of the videos
24 that were posted to CrossFit.com with Rob?

25 A. At the time when we were much tighter

1 S. Martinez

2 for the CrossFit Games 2010. Yes, he was -- he's
3 that -- he's ridiculous. So the problem with
4 posting a video on CrossFit.com are the comments
5 are ridiculous. Anybody can say whatever the
6 hell they want. So there would be some that are
7 totally positive and then there would be some
8 that are totally negative. And the thing with
9 Rob is all he cared about was the negative ones.
10 So that's all we would talk about was the
11 negative ones.

12 We wouldn't necessarily talk about
13 the good ones. And then if it was too negative,
14 he would say Syn, would you say something to this
15 guy. All right. Whatever. I'll say something.

16 But I was -- yes. I would watch them
17 more often in 2010 than I did in '11.

18 Q. In these videos would Mr. Orlando
19 wear the shirt with the Hybrid H on it?

20 A. Yes. Most definitely. He wore the
21 same damn or what looked like the same damn shirt
22 every day or sometimes no shirt which would be
23 kind of crazy, because you'd rarely see him
24 without a shirt on.

25 I mean Rob was CrossFit's chance to

1 S. Martinez

2 get out of CrossFit. Meaning Rob was CrossFit's
3 chance to kind of go mainstream.

4 Q. How so?

5 A. CrossFit was stuck on itself. It
6 didn't necessarily appeal to a broader audience.
7 I mean it did in terms of people coming from
8 whatever background they had into CrossFit, but
9 CrossFit trying to get out of CrossFit into a
10 more mainstream area 2011, it really wasn't
11 happening. I mean it was slowly happening, but
12 he was one of the first people to get them out of
13 CrossFit.

14 Q. What did Mr. Orlando do to extend
15 beyond CrossFit?

16 MR. BEGAKIS: Objection. Calls for
17 speculation.

18 A. When I was around more often, it was
19 you know, we were talking about like a Ford
20 commercial. Like there was a local dealer or
21 something like that was going to put him in kind
22 of a Ford commercial, flipping tires. And it was
23 some kind of play on Strongman and pickups or
24 something like that.

25 Because we did a workout -- that was

1 S. Martinez

2 one of the things we used to do was work out to
3 pickups. We push in it and jump in it and
4 something retarded. It was fun. Right.

5 So Rob was the first CrossFit
6 competitive athlete to break out of CrossFit and
7 get into a mainstream magazine, as we see here.
8 I mean no one else was doing that at that time.
9 It didn't matter who they were. They just
10 weren't doing it.

11 Q. At this time, did this affect Rob's
12 Hybrid Athletics brand?

13 A. I mean he went, the brand went with
14 him, so to speak. So, again, I wasn't there. I
15 wasn't in the day-to-day everything with that,
16 with him at the time, so I don't know how
17 effective that was or how well he did with that
18 or anything like that. I'm sure it sold more
19 shirts, so.

20 Q. Would you see the shirt more often or
21 his logo more often?

22 A. Yes. I mean I -- again, there was
23 times I would be at events, and it would be
24 everywhere, and then, you know, it wouldn't make
25 me happy, because I'm there to sell apparel as

1 S. Martinez

2 well. So what the hell is all this Hybrid crap?

3 So, yes. I mean it definitely -- for
4 the people that saw that, that have known Rob and
5 would see Rob or want to be Rob, yes. It was
6 Hylete-effective.

7 MR. KOSMA: Mark this as Exhibit 6,
8 please.

9 (Whereupon, Hybrid Exhibit 6,
10 document consisting of the Hylete logo was
11 hereby received in evidence, as of this
12 date.)

13 MR. KOSMA: And mark this as Exhibit
14 7 as well.

15 (Whereupon, Hybrid Exhibit 7,
16 document consisting of Hylete logo was
17 hereby received in evidence, as of this
18 date.)

19 Q. Mr. Martinez, I'm going to pass to
20 you what's been marked into evidence as
21 Exhibit 6.

22 Mr. Martinez, what is this document?

23 A. This is the Hylete logo.

24 Q. And what is the logo of?

25 A. It looks like an H.

1 S. Martinez

2 Q. I pass you Exhibit 7, marked as in
3 evidence, and what is that document?

4 A. This would be another Hylete logo.

5 Q. Are you familiar with the Hylete H
6 logo?

7 A. I am.

8 Q. When did you first see the Hylete
9 brand H logo?

10 A. It might have been 2011, but it could
11 have been 2012. 2012 for sure, but it might --
12 the first time I saw it, it might have been 2011.
13 Late 2011.

14 Q. What was your first impression of the
15 Hylete H?

16 MR. BEGAKIS: Objection. Calls for
17 speculation.

18 A. I really didn't know what to think.
19 Again, Rob and I didn't or we weren't talking
20 like that, so I wasn't sure if this is something
21 he was a part of. I didn't know if this was
22 something he was spinning off to. I didn't
23 really know at the time. I didn't really have an
24 opinion when I first saw it.

25 Q. Did you -- well, you mentioned Rob

1 S. Martinez

2 when you first saw it. Why would you -- why do
3 you mention Rob?

4 A. Because it's an H, and it has the
5 word Hylete, but it could easily at first glance
6 say Hybrid.

7 Q. You mentioned you saw it in 2012?

8 A. Definitely 2012.

9 Q. And where did you see the Hylete H in
10 2012?

11 A. They were at regionals or -- I mean
12 at the time they were picking up speed with
13 affiliates. So what's popular I do it too, is
14 that a company, you know, a gym owner will call
15 an apparel company like me, or whoever, and
16 they'll say, hey, listen, I want you to make in
17 addition to my CrossFit Stamford shirt line I
18 want it to be an afroBRUtality edition, or
19 whatever, and some will even request to have my
20 logo on the sleeve.

21 So I started seeing affiliates of gym
22 owners with Hylete or this H on their sleeve, and
23 it was interesting.

24 I mean again, I -- you know it was
25 just 2011, '12. I didn't really know what was

1 S. Martinez

2 going on.

3 He had asked me to get in with this
4 JACO thing, and I didn't do it, because it's made
5 in China. At the time I was very big on American
6 made stuff. I still am, for the most part.

7 And once they said -- because I met
8 him at the games 2011, and I said where are they
9 made. He said China and I said no. I'm out.
10 Goodbye.

11 Q. When you say this JACO thing, you're
12 referring to Exhibit 4, the JACO shorts?

13 A. Yes. Correct.

14 Q. And when you say get into the JACO
15 shorts, what do you mean?

16 A. Well, there was a lot of gyms, I
17 don't know how many, I think there were -- that's
18 the thing. When Rob got into something, he'd
19 call his buddies and say, hey, what do you think?
20 Is this cool? And then you know we'd say, yes,
21 let's do it or you'd be like nah.

22 So he asked me about it when I met
23 them at the games and at first question was where
24 are they made. He said China. And then I just
25 walked away, and that was done.

1 S. Martinez

2 But I saw it on other gym owners who
3 were using JACO, but I didn't see them on MMA
4 people as well so but I turned that down. I
5 didn't want to deal with that, so that's what I
6 mean.

7 Q. Okay. Moving back to Exhibit 7, you
8 said you started seeing this Hylete H?

9 A. Yes. I just started seeing this H on
10 gym owner's shirts or gym shirts and it seemed to
11 be pretty, it seemed like it was growing fast. I
12 started seeing a lot of gyms with the H on, and
13 saw some shorts come out that looked like those.

14 Q. What was your impression when you saw
15 the Hylete H at gyms?

16 A. I mean I didn't -- the thing about me
17 is I like to know my competitors, so to speak. I
18 like to know what the hell is going on. So other
19 than seeing them on other gym shirts, I wasn't a
20 hundred percent sure what was going on. So I
21 kind of did not much research but a little, but I
22 still didn't know whether this was Rob's thing.
23 I didn't know if this was like something he was
24 spinning off to or something he was getting into.
25 I wasn't sure.

1 S. Martinez

2 Q. So you thought this might be --

3 A. I immediately thought it might be one
4 of Rob's.

5 MR. BEGAKIS: Objection. Leading the
6 witness.

7 Q. You said it might be, but you didn't
8 know if it was Rob's thing. What do you mean by
9 that?

10 A. Well, the only thing that I've ever
11 seen that was "Hy" whether it was Hylete or
12 Hybrid was Rob. That's all I knew. That's my
13 only frame of reference. And the H just looks,
14 you know, like I don't know. The H is not that
15 stunning. It's the fact for me that it says
16 Hylete and all we used to talk was Hybrid
17 athletes, so and we always talked about creating
18 what's in a Hybrid Athlete? How do you create
19 one? What is one? Like we defined it and
20 quantified that with certain tasks that they
21 could be able to do.

22 So it just -- I just thought this was
23 something he was getting into, maybe didn't take
24 my advice to stay with the H. Maybe he decided
25 to upgrade. And at the time we weren't really

1 S. Martinez
2 talking like that, so I didn't really ask him. I
3 just assumed this was something he's spinning off
4 on.

5 Q. What did you do after you -- did you
6 contact Rob after seeing the Hybrid H?

7 MR. BEGAKIS: Objection. Leading the
8 witness.

9 A. What are you talking about? Oh, the
10 Hylete.

11 Q. I'm sorry. Take a look at Exhibit 6.

12 A. 6, okay. No. I didn't. I didn't --
13 again, this was 2011. It was late 2011 when I
14 saw it. And when I really saw it in 2012 when
15 they were at like regionals and they were at the
16 games. Then I realized it wasn't Rob, because
17 Rob had nothing to do with it. Rob was right
18 next to them at regionals. So, clearly, he had
19 nothing to do with it. And I actually think he
20 might have given me a phone call or e-mail or
21 something like that to try to discuss this, but,
22 again, I was really out of the loop. I was out
23 of the loop since 2010, so I assumed that this
24 was something he was spinning off of or doing
25 something with.

1 S. Martinez

2 When it was apparent that he wasn't,
3 you know, I still just kind of kept my comments
4 to myself for the most part for 2011 and '12.
5 Even though I didn't feel right that someone with
6 that logo that's just that close and wrap it up
7 with a word which really just means Hybrid
8 Athlete. It didn't sit right with me, but again
9 we weren't really talking like that.

10 So I didn't necessarily break my
11 balls to say, hey, Rob, let's fucking go get this
12 guy or are they stealing from you blah, blah.
13 And it wasn't really my thing at the time. I
14 thought he can handle it. It's all good. If
15 they're stealing, I'm sure he'll deal with it. I
16 wasn't going to get involved.

17 MR. KOSMA: I'm going to have this
18 document marked into evidence as
19 Exhibit 8.

20 (Whereupon, Hybrid Exhibit 8, e-mail
21 to Rob Orlando about Hylete LLC
22 December 2013 was hereby received in
23 evidence, as of this date.)

24 Q. Mr. Martinez, will you please review
25 this exhibit, and let me know what it is.

1 S. Martinez

2 A. This is my e-mail to Rob about
3 Hylete, it looks like December 2013.

4 Q. And why did you send this e-mail to
5 Rob?

6 A. I was also facing a few challenges.
7 I went through like the bearded the fuck-up thing
8 where like I actually put it out as a contest and
9 I was like, hey, let's come up with some slogans.
10 So it was one that was pretty close to bearded
11 the fuck-up, and then I just was like why don't
12 we just say bearded the fuck-up.

13 Then I got a number of posting on
14 social media. I got calls immediately, e-mails.
15 People were trying to like really hate on it.
16 Because there was already a term out there that
17 said beard the fuck-up not bearded.

18 So we went back and forth all day.
19 He called must have called some lawyers or
20 something because he was very belligerent in the
21 beginning. And then by the end of the day --

22 Q. When you say he, who are you
23 referring to?

24 A. This is the company. I think they're
25 called Kill The Shave.

1 S. Martinez

2 Q. Oh, this is about --

3 A. This is my shit.

4 Q. Okay.

5 A. So you know I had been through some
6 slogan stealing and all that and people kind of
7 taking shit. So you know I was seeing, thinking
8 back, you know seeing Rob next to him and how
9 uncomfortable he was to have to sell Hybrid
10 Athletics next to Hylete and people really not
11 understanding the difference between the two, I
12 just kind of sat on it. I didn't really think
13 about it. It wasn't really my thing. You know I
14 was out of the loop.

15 He can handle that, but starting to
16 deal with some of my own issues of people just
17 straight up stealing from, me whether it's
18 graphics or slogans or whatever.

19 You know I just kind of had, I think
20 the catalyst was just seeing Hylete everywhere
21 and not seeing Rob anywhere at the time, and I
22 just had enough.

23 I said, listen man, let's do
24 something. Let's talk about it. Let's -- it's
25 clear that they got some traction. I'm seeing

1 S. Martinez

2 them everywhere. It was ridiculous. And I just
3 didn't like it. So I voiced my opinion in the
4 e-mail, sent it to him and asked him if there is
5 anything I could do to help.

6 Q. In the second line of the e-mail, can
7 you read that?

8 A. It says:

9 "I'm not sure what can be done, but
10 the fact that they are flooding the
11 community with their brand over yours is
12 disrespect in my opinion."

13 Q. Could you read the one right above
14 that.

15 A. Yes.

16 "Not sure what can be done, but the
17 'H' in the term Hybrid Athlete is
18 something that you have created in the
19 CrossFit community."

20 Q. You put the H in quotes. Why did you
21 do that?

22 A. It was just too similar. The H-- the
23 Hybrid H and the Hylete H is just too similar,
24 and it's not -- I don't mean similar like it
25 looks the same.

1 S. Martinez

2 I mean if it said Hobo Athletics, it
3 would be totally different right but the fact
4 that there not only is an H but also is using the
5 term basically Hybrid Athletes. And they're just
6 put it together and said Hylete, and going after
7 particular athlete and not athletics it was just
8 too much, and I just couldn't deal with it.

9 I finally, I seen it again in 2011
10 late. Definitely saw it in 2012. And they were
11 gaining traction, they were gaining speed. In
12 places where I would expect to see Rob, I was
13 seeing them. And when I did see Rob, you know,
14 he didn't have the elaborate setup that they did.

15 So it was clear that they had money.
16 They had the wherewithal, and if they wanted to
17 do it -- it just looked like they could just do
18 whatever they wanted. If they wanted to start
19 making Atlas Stones next week, they could have
20 done that. If they wanted to buy him out, I
21 don't know.

22 It just looked like just smashing on
23 the little guy, and I didn't like it. So Rob and
24 I we sort of started it at the same time, to a
25 certain extent. I mean he was more established

1 S. Martinez

2 than I was, and he had more of a following than I
3 did at the time, and he was a competitive athlete
4 which I was not. And that just brings all kinds
5 of credibility to the brand, because you're
6 living it. You're breathing it. You're a part
7 of the same thing that you're preaching. So
8 you're not more of a passive person saying I'm
9 all about this, but I don't necessarily do it. I
10 used to. He did this every single day.

11 So to see Rob, and know how much he
12 worked for that. And to finally know because I
13 started kind of doing my own thing and asking my
14 own questions in my head and figuring out what's
15 going on, to see he was not a part of that at all
16 and did not sanctify this or agree to this, it
17 was too much for me. I had to say something.

18 Q. Earlier, you mentioned you had-- you
19 were in corporate sales for 25 years?

20 A. Yes.

21 Q. Can you elaborate on what you mean by
22 corporate sales for 25 years?

23 A. Yes. I started off in the customer
24 service thing, kind of doing more telemarketing.
25 First, I was taking phone calls. Then I was

1 S. Martinez
2 making phone calls. Then I made it into like
3 deliveries. And then from deliveries I got into
4 customer service, where I would follow a direct
5 salesperson, and just kind of assist them, and
6 then I became the direct salesperson myself, and
7 I started that venture probably in '93.

8 Q. What kind of experience with brands
9 do you have in your corporate sales experience?

10 A. A lot. I was representing bigger
11 brands like NYNEX, Bell Atlantic, Verizon,
12 Konica, Konica -- I can't remember.

13 Anyway my point is so I've dealt with
14 bigger brands. I know what they can do to little
15 guys. I've seen them do it. I've seen them do
16 it over and over again especially when it was
17 like cellular sales and stuff like that.

18 I've seen like Omnipoint get squashed
19 by Sprint and Sprint squashes Metro PCS. You
20 just see this, and I've had that kind of
21 experience before.

22 Q. Did your experience with corporate
23 sales help you build your brand?

24 A. Totally. My sales were more direct.
25 I still did direct sales. Now that CrossFit is

1 S. Martinez

2 changing and the community has changed, I have to
3 do more of an e-commerce solution, but that's
4 what made me successful was the fact I knew how
5 to sell, so I could go to an event and sell. I
6 didn't have to -- I knew all the trimmings. I
7 knew, you know, I knew it all. You shake hands
8 kiss babies. That's how you do it.

9 Q. What makes a good brand?

10 MR. BEGAKIS: Objection. Calls for
11 speculation.

12 A. You just got to be about it. You
13 can't -- a brand is no good if let's say it's not
14 something you're really about, something you
15 really live. It's just no good. It's just a
16 thing or a word or a phrase or a slogan or
17 whatever. But it's something that you really
18 live it and you're really about it, then it just
19 comes full circle.

20 So you create something. You live
21 something. And then people will say I want to
22 live that as well. I can relate to that.

23 Q. Do you have any logo or image that's
24 synonymous with your brand?

25 A. I have a few.

1 S. Martinez

2 Q. And what are those?

3 A. Everything stems from a skull with a
4 huge afro on it, so I just kind of put that in
5 different ways. I grew up with Iron Maiden, so
6 Eddie was always something different, so I did
7 the same thing. I started off with my Eddie, as
8 a skull with an afro and then I turned him into a
9 woman with afro puffs and then I gave him-- I
10 turned him into Malcolm X. And then I turned him
11 into a bunch of other things. So, yes, I'm
12 synonymous for that.

13 Q. How important is that afro skull to
14 your brand?

15 A. It's huge. I've seen it pop up in so
16 many different places. You can Google it. In
17 2009, there was no searches. Nothing. You can
18 Google it now.

19 I've seen it on Jackass had it as one
20 of their logos for I think it was Jackass the
21 movie. And he had a skull with an afro had a
22 pick in it and then like cross crutches or
23 something retarded like that. It's everywhere
24 now. It's not underground anymore. It's
25 aboveground. And it's not in many searches as

1 S. Martinez

2 you put in now and won't be in as many searches,
3 but you put in the word "afro skull," you'll get
4 some pictures, and they won't all be mine.

5 MR. KOSMA: Let's take a quick
6 ten-minute break. Then we'll come back.

7 (Whereupon, a short recess was
8 taken.)

9 Q. Mr. Martinez, do you do any work with
10 Hylete?

11 A. I do now.

12 Q. When did that begin?

13 A. A few weeks ago. I have a grid team
14 out of Harlem.

15 Q. What is a grid team?

16 A. Grid is like -- it's almost like a
17 CrossFit spinoff, but it's like CrossFit on
18 steroids, so to speak. It's faster. So the
19 workouts are much faster and they're just as
20 heavy and just as technical, but they're just
21 faster.

22 Q. And you said a team?

23 A. Team.

24 Q. Is this -- what does a team do?

25 A. So their spin is that it's like

1 S. Martinez
2 professional CrossFit I guess, if you want to
3 call it that.

4 So you have team players that
5 specialize in certain things, whether it's
6 gymnastics or weight lifting. And you kind of
7 assemble your team based on what the workouts
8 are. And then you can switch them in and out as
9 much as you want as long -- until the task is
10 complete.

11 Q. How many teams are there?

12 A. There are eight professional. Mine
13 is an amateur team. There are seven in the
14 Northeast. Seven amateur teams in the Northeast,
15 and mine is one of them.

16 Q. You said there were eight pro teams?

17 A. There are eight pro teams.

18 Q. Are there amateur teams all over --
19 where are there other amateur teams?

20 A. There's I think there's Southern
21 California one, call it SAG or something like
22 that. Like there's a lot. They're popping up.
23 There's some in Chicago. There's some have
24 contacted me from North Carolina, South Carolina.
25 So they're popping off all over the country.

1 S. Martinez

2 Q. And you said you're working with
3 Hylete through a grid league?

4 A. Correct.

5 Q. And why is that?

6 A. I mean they won the bid I guess to
7 outfit the professional teams. If I want my team
8 to look professional, then I got to go to Hylete.
9 I probably could go somewhere else, but I
10 probably don't have that much time to figure that
11 out. So I guess I just took the shortcut and
12 went where all the professional teams went.

13 MR. KOSMA: Mark this as Exhibit 9
14 into evidence.

15 (Whereupon, Hybrid Exhibit 9,
16 Opposer's Notice of Trial Deposition was
17 hereby received in evidence, as of this
18 date.)

19 Q. Mr. Martinez, have you seen this
20 before?

21 A. No. I haven't seen this before.

22 Q. Can you please read it.

23 A. The whole thing?

24 Q. Yes.

25 (Witness reviews the document.)

1 S. Martinez

2 A. Got it.

3 Q. Do you know what this is?

4 A. Deposition.

5 Q. Is this why you're here today?

6 A. Yes.

7 Q. Do you remember seeing this now at
8 any time, or no?

9 A. Maybe, I might have. You sent it to
10 me in an e-mail. I probably didn't even open it.
11 I get a lot of e-mails.

12 Q. Are you receiving any compensation
13 for testimony today?

14 A. No. Absolutely not.

15 Q. Why are you giving testimony today?

16 A. It's just right, the right thing.
17 Again, Rob and I, we -- business-wise, we went
18 our separate ways, but you know he's a good guy,
19 and if someone came after me like this, I
20 wouldn't know what to do.

21 So part of it is just, you know, I
22 guess, selfishly, I want to see what could be
23 done in a situation like this, and I want to make
24 sure I'm doing the right thing.

25 Q. When you say you and Rob went, you

1 S. Martinez

2 said opposite directions or --

3 A. Yes.

4 Q. Why is that?

5 A. So I coached Rob at the 2010 CrossFit
6 Games. It was an honor. He asked me to do it.
7 I immediately said, yes, and it was just a
8 stressful environment. He's got a nervous energy
9 about him that I couldn't seem to calm down. His
10 GM wasn't necessarily rallying to be there with
11 him. It's all last minute. They all got tickets
12 and stayed in my hotel room.

13 Then some people got an opinion that
14 I wasn't making him available enough to them, to
15 the people that had flown out there. And I guess
16 the catalyst was I had sent an e-mail to Rogue,
17 because we had two sponsors at the time. We had
18 Rogue Fitness and we had Progenics. And I sent
19 them both the same e-mail basically saying we
20 didn't do what we expected to do at the CrossFit
21 Games, but I hope everything is, you know,
22 business-wise is still good between us.

23 Progenics understood. There was no
24 issue, and Rogue, who loved, loves Rob, thought
25 it was a sign of me not having confidence in Rob,

1 S. Martinez
2 voiced their opinion. And because it was a new
3 venture and they were going to bring-- put some
4 nice coin in his pocket, we decided to go our
5 separate ways.

6 Q. And that was 2010?

7 A. It was 2010.

8 Q. Since 2010, how often do you -- would
9 you say you talk to Mr. Orlando?

10 A. Very sporadically. Maybe twice a
11 year. Two, three times a year.

12 MR. KOSMA: I have no more questions.
13 Thank you.

14 MR. BEGAKIS: Yes. I have some
15 questions.

16 (Luncheon recess: 11:33 a.m.)
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25

1 S. Martinez

2 A F T E R N O O N S E S S I O N

3 (Time noted: 12:35 P.M.)

4 S Y N C E R E M A R T I N E Z,

5 resumed and testified as follows:

6 MR. KOSMA: Before you get going, I
7 just want to put on the record that,
8 unless you agree to waive the sealing of
9 the evidence.

10 MR. BEGAKIS: Yes, I agree.

11 MR. KOSMA: Okay. That's great.

12 Thank you.

13 EXAMINATION BY

14 MR. BEGAKIS:

15 Q. I just have a couple of follow-up
16 questions, Syn, but it shouldn't take all but a
17 few minutes.

18 A. Okay.

19 Q. You mentioned that you had a falling
20 out with Rob in about 2010 --

21 A. Yes.

22 Q. -- is that correct?

23 But you were very involved in the
24 development of his -- of the H brand, the Hybrid
25 Athlete brand before your falling out; is that

1 S. Martinez

2 correct?

3 A. Yes.

4 Q. You told Rob you wanted to stick with
5 it in terms of the brand and --

6 A. No.

7 Q. Well, you mentioned earlier in the
8 questioning deposition that when Rob was thinking
9 about moving to different brands, other than the
10 H, that you really wanted him to stick with it;
11 is that right?

12 A. Well, he wasn't. My point was that's
13 what I -- I was scatterbrained. He was always on
14 the H.

15 The only thing that I didn't want him
16 to do was to become too CrossFit. I didn't want
17 him to do that. And he went in that direction,
18 so --

19 Q. Okay.

20 A. -- after 2010 I had I pretty much
21 washed my hands of everything.

22 Q. But in the early stages of him
23 building his brand when you guys were working
24 together and you guys were staring stories, as
25 you said, did you tell him to stick with the H

1 S. Martinez

2 brand?

3 A. I said stick with the Hybrid
4 Athletics brand. Don't try to make it a CrossFit
5 brand. Stick with the H brand.

6 Q. And you mentioned that you were
7 always talking about creating the Hybrid brand?

8 A. Yes. Okay.

9 Q. So, additionally, you said that
10 you've been in the business -- you've been in
11 business for a while, and with a logo or a brand,
12 you've got to be about it?

13 A. You've got to be about it.

14 Q. You've got to live it is what you
15 said?

16 A. You got to live it, true.

17 Q. So is it safe to say that at the time
18 you were about the H brand, the Hybrid brand?

19 A. Yes. At the time when I was with
20 him, absolutely.

21 Q. Is it safe to say that you're still
22 about the Hybrid brand?

23 A. He's done a lot of things I don't
24 agree with, which is why we pretty much went our
25 separate ways.

1 S. Martinez

2 Q. So with respect to you and Rob,
3 personally, you've gone your separate ways, but
4 is it fair to say that you have or still have
5 some sort of emotional connection to the Hybrid
6 brand?

7 A. To Rob, yes. The Hybrid brand, not
8 really. Rob, yes.

9 Q. Do you want to see the Hybrid brand
10 succeed?

11 A. I'd like to see him do well, of
12 course.

13 Q. Thank you. You mentioned that you
14 have your own gym?

15 A. Yes.

16 Q. And you worked at Rob's gym a lot?

17 A. I didn't work.

18 Q. Or were a trainer?

19 A. A trainer.

20 Q. Excuse me. Yes.

21 A. I trained there with him. I wasn't a
22 trainer with him or anything.

23 Q. But you were at the gym a lot?

24 A. Yes. I was there probably three days
25 a week.

1 S. Martinez

2 Q. You've gone to you said was it 300 or
3 400 events?

4 A. At least.

5 Q. At least. And you said a couple
6 other athletic events as well; right?

7 A. Yes. OCR and I went to the ESPY's
8 this year.

9 Q. So you see a lot of athletes?

10 A. I do.

11 Q. You see a lot of athletic brands?

12 A. That's what they say they are, yes.
13 I've seen them.

14 Q. So you've seen other stylized logos
15 of an H; correct?

16 MR. KOSMA: Objection.

17 A. That's a rough one. That's rough.
18 That's really testing my memory. I've never seen
19 another H brand. These are the only two I've
20 seen in, within athletic or within the CrossFit
21 community. However, you want to see that. I
22 haven't seen any other H brand.

23 Q. So you haven't seen any of your
24 athletes wearing Under Armour?

25 A. Not in CrossFit. You'd be surprised.

1 S. Martinez

2 Q. So none of the athletes you've seen
3 have worn Under Armour?

4 A. I mean I haven't --I don't look for
5 logos like that. Maybe some socks, some shoes.

6 Q. So you've seen --

7 A. I've seen other people, athletic
8 people, wearing Under Armour, yes.

9 Q. Okay. So then you've seen a stylized
10 H logo in athletic clothing before?

11 MR. KOSMA: Objection.

12 A. I thought that was a U. It doesn't
13 look like an H to me. Is that an H?

14 Q. I'll move on from that, but it's fair
15 to say that you've seen quite a few athletic
16 logos?

17 A. I've seen a lot of athletic logos.

18 Q. You first saw the Hylete logo in, you
19 said in late 2011?

20 A. Late 2011.

21 Q. Definitely 2012 though?

22 A. Definitely 2012.

23 Q. When you saw it you weren't talking
24 to Rob? You had your falling out at that point?

25 A. Yes. We weren't talking like that.

1 S. Martinez

2 Q. But you felt like it was similar?

3 A. I felt it was probably something he
4 was doing.

5 Q. So you thought it was something he
6 was doing?

7 A. Yes.

8 Q. Not somebody else?

9 A. No. I thought it was something he
10 was doing.

11 Q. In fact, you didn't feel the need to
12 immediately call him?

13 A. No.

14 Q. You didn't feel the need to e-mail
15 him until 2013?

16 A. Yes.

17 Q. You felt like you were out of the
18 loop at that point? This was something he was
19 doing. You were just going to let it go?

20 A. Yes. 2011, I thought it was just
21 something he was spinning off or doing.

22 2012, when I saw them side to side,
23 it was clear that it wasn't something he was
24 doing.

25 And by 2013, I was just like --

1 S. Martinez

2 Q. When you said you saw them side by
3 side, that was at a regional event --

4 A. Correct.

5 Q. -- where both of them were being
6 sold, so it was very clear at that point that --

7 A. Exactly.

8 Q. -- two different people were selling
9 two different products under two different
10 brands?

11 A. Yes.

12 Q. You see -- and I just-- we were just
13 talking about this a little bit, but you see a
14 lot of CrossFit athletes between your gym and
15 regional events and all kinds of events?

16 A. Yes. That's correct.

17 Q. Have you heard anyone, any CrossFit
18 athlete at your gym or at regional events say,
19 hey, the Hylete logo looks like the Hybrid logo?

20 A. Unfortunately, I have.

21 Q. Okay. So can you explain to me in
22 what circumstances at what point?

23 A. When they were side by side, pretty
24 much side by side at regionals, people were
25 coming to me totally confused like what is this?

1 S. Martinez

2 Why are they side by side? I thought they were
3 the same thing. I said, no. Clearly, they're
4 totally separate.

5 Q. But those people weren't confused
6 about the creators of those products? They were
7 confused about the fact that two products bearing
8 those logos were being sold at the same place;
9 correct?

10 A. Well, they were under the impression,
11 just as I was, that they were actually the same
12 thing.

13 Q. But when you say they're under the
14 impression, that's because they were seeing
15 people selling these products there; correct?

16 A. Right, but they had no association
17 with Rob whatsoever.

18 Q. Correct.

19 So, but you're telling me and it's
20 your statement today, that when people were
21 saying, hey, these look similar, it was because
22 they were seeing both companies selling both
23 brands; correct?

24 A. That's correct.

25 Q. You mentioned that Rob's sales have

1 S. Martinez

2 dropped off since 2011; is that correct?

3 A. I mean I'm -- I don't really know in
4 terms of sales. Like I don't check his numbers.
5 I don't know profit --

6 Q. So you mentioned --

7 A. -- but I know that the exposure
8 between Rob and between Hylete is totally
9 different.

10 Q. Right, but that's not what I'm
11 asking. You mentioned earlier in the deposition
12 that Rob's brand was really booming in 2009, 2010
13 or that it was taking off, but that since, it's
14 kind of dropped off?

15 A. Yes.

16 Q. But you don't know how much it's
17 dropped off in terms of sales?

18 A. I have no idea.

19 Q. You mentioned that at a certain point
20 at regionals you started to see Hylete
21 everywhere; is that correct?

22 A. Yes.

23 Q. And is it correct to say that at the
24 same time you were seeing Hylete everywhere, you
25 were seeing less of Rob's brand?

1 S. Martinez

2 A. That's fair.

3 Q. Is it safe to say Rob's brand
4 development has tapered off?

5 A. That can be fair.

6 Q. Is it safe to say his brand
7 development has declined?

8 A. I wouldn't be able to answer that. I
9 don't really know if it's declined.

10 Q. But you don't see as much of it these
11 days?

12 A. That's correct.

13 MR. BEGAKIS: I have no further
14 questions.

15 THE WITNESS: Thank you.

16

17 (Time noted: 12:45 p.m.)

18

19

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25

1 S. Martinez

2 STATE OF NEW YORK.)

3 : ss.

4 COUNTY OF _____)

5

6

7 I, SYNCERE MARTINEZ, the witness herein,
8 having read the foregoing testimony of the pages
9 of this deposition, do hereby certify it to be a
10 true and correct transcript, subject to
11 corrections, if any, shown on the attached page.

12

13

14

15 _____
SYNCERE MARTINEZ

16

17

18 Sworn and Subscribed
19 this _____ day of _____, 2015.

20

21

22

Notary Public

23

24

25

1 S. Martinez

2 ----- I N D E X -----

3 WITNESS EXAMINATION BY PAGE

4 SYNCERE MARTINEZ Mr. Kosma 4

5 Mr. Begakis 86

6 ----- INFORMATION REQUESTS -----

7 DIRECTIONS: (None)

8 RULINGS: (None)

9 TO BE FURNISHED: (None)

10 REQUESTS: (None)

11 ----- EXHIBITS -----

12 HYBRID IN EV.

13 Exhibit 1, document consisting of logo 35
14 for Hybrid Athletics

15 Exhibit 2, photograph 45

16 Exhibit 3, Hybrid Athletics shirt 53

17 Exhibit 4, JACO shorts 53

18 Exhibit 5, Muscle & Fitness article 55
19 called "The King of CrossFit"

20 Exhibit 6, document with Hylete logo 64

21 Exhibit 7, document with Hylete logo 64

22 Exhibit 8, e-mail to Rob Orlando about 71
23 Hylete LLC December 2013

24 Exhibit 9, Opposer's Notice of Trial 82

25 Deposition

*** ERRATA SHEET ***
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CASE: Hybrid Athletics, LLC v. Hylete LLC
 DATE: JULY 29, 2015
 WITNESS: SYNCERE MARTINEZ REF: 14599

PAGE	LINE	FROM	TO
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 SYNCERE MARTINEZ

Subscribed and sworn to before me
 this ____ day of _____, 20__.

 Notary Public

1 S. Martinez

2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6
7 I, JOSEPH DANYO V, a Shorthand Reporter
8 and Notary Public within and for the State of New
9 York, do hereby certify:

10 That SYNCERE MARTINEZ, the witness
11 whose deposition is hereinbefore set forth, was
12 sworn and that such deposition is a true record
13 of the testimony given by such witness.

14 I further certify that I am not related to
15 any of the parties to this action by blood or
16 marriage; and that I am in no way interested in
17 the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 9th day of August, 2015.

20
21 _____
JOSEPH DANYO V

<p>A</p> <p>a.m 2:5 85:16</p> <p>ability 23:19</p> <p>able 33:4 34:12 37:3 41:8 48:22 69:21 96:8</p> <p>aboveground 79:25</p> <p>absolutely 28:6 83:14 88:20</p> <p>action 100:15</p> <p>actors 23:21</p> <p>actual 50:6</p> <p>addition 66:17</p> <p>additionally 88:9</p> <p>address 5:20</p> <p>adhere 10:3</p> <p>advertising 11:18</p> <p>advice 69:24</p> <p>advised 39:15</p> <p>advisor 39:17</p> <p>affect 19:7 21:20 63:11</p> <p>affiliates 66:13,21</p> <p>affiliation 9:9</p> <p>afro 79:4,8,9,13,21 80:3</p> <p>afroBREWtality 6:11 11:6,19,20 11:24</p> <p>afroBRUtality 6:15 8:11 9:4 15:18 18:16 66:18</p> <p>afternoon 33:20</p> <p>age 33:8</p> <p>ago 21:11 22:20 80:13</p> <p>agree 76:16 86:8,10 88:24</p> <p>Albany 28:22</p> <p>amateur 81:13,14 81:18,19</p> <p>America 12:3,7</p> <p>American 67:5</p> <p>amount 34:12</p> <p>amounts 29:3</p> <p>Angeles 3:16</p>	<p>answer 5:5 10:11 10:12 96:8</p> <p>anybody 14:5 61:5</p> <p>anymore 79:24</p> <p>Anyway 77:13</p> <p>apart 19:20</p> <p>apparel 6:7,14 8:11 9:19,21 10:5,18 16:13,15 18:21 22:18 23:8 27:6,7 27:13,15 28:13,13 36:5 63:25 66:15</p> <p>apparent 71:2</p> <p>appeal 1:3 26:14 62:6</p> <p>appeals 18:14</p> <p>appear 19:4</p> <p>APPEARANCES 3:2</p> <p>Applicant 1:11 3:14</p> <p>approximately 35:22 51:14 52:8 52:19</p> <p>April 8:15 9:3</p> <p>area 31:5 51:3 62:10</p> <p>arm 34:18,19,20</p> <p>Armour 90:24 91:3 91:8</p> <p>article 55:25 56:12 56:22,24 57:6,10 58:2,10 98:18</p> <p>ASICS 60:22</p> <p>asked 48:9 67:3,22 74:4 84:6</p> <p>asking 7:21 10:15 13:10 15:25 57:4 76:13 95:11</p> <p>asphyxiated 12:2</p> <p>AsRx 8:22 26:22,24 26:25</p> <p>assemble 81:7</p> <p>assist 77:5</p> <p>associated 14:13</p> <p>association 94:16</p> <p>assumed 70:3,23</p>	<p>ate 27:22</p> <p>athlete 33:5 37:12 44:7,9,12 63:6 69:18 71:8 74:17 75:7 76:3 86:25 93:18</p> <p>athletes 69:17 75:5 90:9,24 91:2 93:14</p> <p>athletic 44:6 90:6 90:11,20 91:7,10 91:15,17</p> <p>athletics 1:7 5:2 26:7 30:4 35:8,15 36:3 37:23 41:20 45:19 51:11 52:20 53:19 54:5,17 55:21 63:12 73:10 75:2,7 88:4 98:14 98:16 99:4</p> <p>Atlantic 77:11</p> <p>Atlas 36:20 40:10 41:24 42:19 50:3 50:13 51:20 75:19</p> <p>attached 97:11</p> <p>attorney 4:25</p> <p>Attorneys 3:5,14</p> <p>attribute 51:25</p> <p>audience 62:6</p> <p>August 100:19</p> <p>Austin 51:2</p> <p>Australia 48:16</p> <p>available 84:14</p> <p>award 23:16</p> <p>awesome 47:9</p> <p>awhile 27:15</p> <p>awkward 37:5</p> <p>axles 51:21 52:5</p> <tr> <td data-bbox="651 1570 927 1894"> <p>B</p> <p>B 39:22,22</p> <p>B-E-G-A-K-I-S 4:20</p> <p>B-R-E-W 6:12</p> <p>B-R-U 6:16,17</p> <p>babies 78:8</p> <p>back 15:15 20:21</p> </td><td data-bbox="927 138 1203 1894"> <p>27:21 68:7 72:18 73:8 80:6</p> <p>background 10:2 11:2,4 62:8</p> <p>balance 28:16</p> <p>balls 40:21 43:16 50:9 71:11</p> <p>bar 51:22</p> <p>barbell 51:23</p> <p>based 23:5 29:20 34:11,12 43:21 81:7</p> <p>basically 75:5 84:19</p> <p>beard 17:8 72:17</p> <p>bearded 14:17 17:21 72:7,10,12 72:17</p> <p>bearing 94:7</p> <p>Beast 30:7,24</p> <p>Begakis 3:17 4:18 4:19 10:9 14:6 16:16 19:10 22:8 24:19 25:14 27:9 32:13 33:18 35:18 36:10,24 38:5 41:21 46:23 50:2 54:24 57:7 59:5 60:5 62:16 65:16 69:5 70:7 78:10 85:14 86:10,14 96:13 98:5</p> <p>beginning 43:3 72:21</p> <p>believer 40:12</p> <p>Bell 77:11</p> <p>belligerent 72:20</p> <p>best 21:14 30:13,25 44:5</p> <p>better 32:24 40:21</p> <p>beyond 25:13 62:15</p> <p>bid 82:6</p> <p>big 19:25 20:25 23:11 28:23 31:18 40:12 43:15 46:19 47:3,7 50:3 51:21 58:16,20 67:5</p> </td><td data-bbox="1203 138 1515 1894"> <p>bigger 51:16,19 52:3 55:5 77:10 77:14</p> <p>biggest 17:25 19:2 58:12,18</p> <p>birth 5:25</p> <p>bit 25:23 28:25 43:18,19 44:22 51:6 54:11 93:13</p> <p>Black 11:10 18:19 18:22</p> <p>blah 28:10,10 39:24,24,24 41:7 41:7,7 71:12,12</p> <p>blew 15:24</p> <p>blood 100:15</p> <p>blow 39:13</p> <p>blown 41:11</p> <p>blurt 14:21,23</p> <p>BOARD 1:3</p> <p>body 41:7</p> <p>bond 43:12</p> <p>books 59:15</p> <p>booming 95:12</p> <p>booth 13:22 36:15 36:15,16</p> <p>bored 46:3,6</p> <p>Boston 31:14</p> <p>bottom 45:15</p> <p>bought 11:2 21:24 54:21</p> <p>boxes 12:15,19</p> <p>brand 8:23 9:24 11:11 12:14 14:12 16:14,15 17:18 25:3,9 26:6,10 36:8 38:4 39:6 41:20 63:12,13 65:9 74:11 76:5 77:23 78:9,13,24 79:14 86:24,25 87:5,23 88:2,4,5,5 88:7,11,18,18,22 89:6,7,9 90:19,22 95:12,25 96:3,6</p> <p>branding 39:16 54:16</p> </td></tr>	<p>B</p> <p>B 39:22,22</p> <p>B-E-G-A-K-I-S 4:20</p> <p>B-R-E-W 6:12</p> <p>B-R-U 6:16,17</p> <p>babies 78:8</p> <p>back 15:15 20:21</p>	<p>27:21 68:7 72:18 73:8 80:6</p> <p>background 10:2 11:2,4 62:8</p> <p>balance 28:16</p> <p>balls 40:21 43:16 50:9 71:11</p> <p>bar 51:22</p> <p>barbell 51:23</p> <p>based 23:5 29:20 34:11,12 43:21 81:7</p> <p>basically 75:5 84:19</p> <p>beard 17:8 72:17</p> <p>bearded 14:17 17:21 72:7,10,12 72:17</p> <p>bearing 94:7</p> <p>Beast 30:7,24</p> <p>Begakis 3:17 4:18 4:19 10:9 14:6 16:16 19:10 22:8 24:19 25:14 27:9 32:13 33:18 35:18 36:10,24 38:5 41:21 46:23 50:2 54:24 57:7 59:5 60:5 62:16 65:16 69:5 70:7 78:10 85:14 86:10,14 96:13 98:5</p> <p>beginning 43:3 72:21</p> <p>believer 40:12</p> <p>Bell 77:11</p> <p>belligerent 72:20</p> <p>best 21:14 30:13,25 44:5</p> <p>better 32:24 40:21</p> <p>beyond 25:13 62:15</p> <p>bid 82:6</p> <p>big 19:25 20:25 23:11 28:23 31:18 40:12 43:15 46:19 47:3,7 50:3 51:21 58:16,20 67:5</p>	<p>bigger 51:16,19 52:3 55:5 77:10 77:14</p> <p>biggest 17:25 19:2 58:12,18</p> <p>birth 5:25</p> <p>bit 25:23 28:25 43:18,19 44:22 51:6 54:11 93:13</p> <p>Black 11:10 18:19 18:22</p> <p>blah 28:10,10 39:24,24,24 41:7 41:7,7 71:12,12</p> <p>blew 15:24</p> <p>blood 100:15</p> <p>blow 39:13</p> <p>blown 41:11</p> <p>blurt 14:21,23</p> <p>BOARD 1:3</p> <p>body 41:7</p> <p>bond 43:12</p> <p>books 59:15</p> <p>booming 95:12</p> <p>booth 13:22 36:15 36:15,16</p> <p>bored 46:3,6</p> <p>Boston 31:14</p> <p>bottom 45:15</p> <p>bought 11:2 21:24 54:21</p> <p>boxes 12:15,19</p> <p>brand 8:23 9:24 11:11 12:14 14:12 16:14,15 17:18 25:3,9 26:6,10 36:8 38:4 39:6 41:20 63:12,13 65:9 74:11 76:5 77:23 78:9,13,24 79:14 86:24,25 87:5,23 88:2,4,5,5 88:7,11,18,18,22 89:6,7,9 90:19,22 95:12,25 96:3,6</p> <p>branding 39:16 54:16</p>
<p>B</p> <p>B 39:22,22</p> <p>B-E-G-A-K-I-S 4:20</p> <p>B-R-E-W 6:12</p> <p>B-R-U 6:16,17</p> <p>babies 78:8</p> <p>back 15:15 20:21</p>	<p>27:21 68:7 72:18 73:8 80:6</p> <p>background 10:2 11:2,4 62:8</p> <p>balance 28:16</p> <p>balls 40:21 43:16 50:9 71:11</p> <p>bar 51:22</p> <p>barbell 51:23</p> <p>based 23:5 29:20 34:11,12 43:21 81:7</p> <p>basically 75:5 84:19</p> <p>beard 17:8 72:17</p> <p>bearded 14:17 17:21 72:7,10,12 72:17</p> <p>bearing 94:7</p> <p>Beast 30:7,24</p> <p>Begakis 3:17 4:18 4:19 10:9 14:6 16:16 19:10 22:8 24:19 25:14 27:9 32:13 33:18 35:18 36:10,24 38:5 41:21 46:23 50:2 54:24 57:7 59:5 60:5 62:16 65:16 69:5 70:7 78:10 85:14 86:10,14 96:13 98:5</p> <p>beginning 43:3 72:21</p> <p>believer 40:12</p> <p>Bell 77:11</p> <p>belligerent 72:20</p> <p>best 21:14 30:13,25 44:5</p> <p>better 32:24 40:21</p> <p>beyond 25:13 62:15</p> <p>bid 82:6</p> <p>big 19:25 20:25 23:11 28:23 31:18 40:12 43:15 46:19 47:3,7 50:3 51:21 58:16,20 67:5</p>	<p>bigger 51:16,19 52:3 55:5 77:10 77:14</p> <p>biggest 17:25 19:2 58:12,18</p> <p>birth 5:25</p> <p>bit 25:23 28:25 43:18,19 44:22 51:6 54:11 93:13</p> <p>Black 11:10 18:19 18:22</p> <p>blah 28:10,10 39:24,24,24 41:7 41:7,7 71:12,12</p> <p>blew 15:24</p> <p>blood 100:15</p> <p>blow 39:13</p> <p>blown 41:11</p> <p>blurt 14:21,23</p> <p>BOARD 1:3</p> <p>body 41:7</p> <p>bond 43:12</p> <p>books 59:15</p> <p>booming 95:12</p> <p>booth 13:22 36:15 36:15,16</p> <p>bored 46:3,6</p> <p>Boston 31:14</p> <p>bottom 45:15</p> <p>bought 11:2 21:24 54:21</p> <p>boxes 12:15,19</p> <p>brand 8:23 9:24 11:11 12:14 14:12 16:14,15 17:18 25:3,9 26:6,10 36:8 38:4 39:6 41:20 63:12,13 65:9 74:11 76:5 77:23 78:9,13,24 79:14 86:24,25 87:5,23 88:2,4,5,5 88:7,11,18,18,22 89:6,7,9 90:19,22 95:12,25 96:3,6</p> <p>branding 39:16 54:16</p>			

brands 25:12 35:22 77:8,11,14 87:9 90:11 93:10 94:23 break 50:8 63:6 71:10 80:6 breathing 76:6 brew 6:18 11:24 bring 30:12 39:9 58:8,9 85:3 brings 76:4 broad 62:6 Bronx 5:21 brought 13:21 browsed 56:15 buddies 67:19 build 77:23 building 87:23 bunch 31:5 41:9 79:11 business 19:7,9 27:8,23 58:4 88:10,11 business-wise 57:22 83:17 84:22 buy 10:4 75:20	35:18 36:10,24 38:5 41:21 46:23 57:7 59:5 62:16 65:16 72:14 76:25 77:2 78:10 calm 84:9 camera 15:16 campaign 12:20,21 57:12,19 campaigned 57:10 campaigning 48:20 car 29:16 care 28:13,14 cared 61:9 Carolina 81:24,24 carry 52:5 Cartel 18:22 CASE 99:4 catalyst 73:20 84:16 catch 14:5 catching 12:22 Caucasian 10:21 caught 12:23 cease 44:15 celebrities 23:20 celebrity 23:18 cellular 77:17 cement 41:25 center 43:20 certain 10:4,5 43:9 69:20 75:25 81:5 95:19 certify 97:9 100:9 100:14 Chalk 17:10,20 challenge 17:12,25 19:2 challenges 16:15 18:9 72:6 chance 61:25 62:3 change 6:18 40:4 changed 23:24 78:2 changing 46:11 78:2 check 95:4 Chicago 51:2 81:23	chicks 42:20,24 43:2 China 67:5,9,24 choice 57:10 Christina 3:10 4:22 circle 78:19 circumstances 93:22 class 10:8 classes 32:18 cleaned 15:5 clear 73:25 75:15 92:23 93:6 clearly 57:14,18 70:18 94:3 cliche 24:7 click 46:16,17,20 cliente 9:20 10:7 10:19,24 close 71:6 72:10 clothing 8:17,19 24:16,18,23 91:10 coach 59:9 coached 84:5 coaches 29:24,25 31:4,5 Cocaine 18:19,22 coffee 6:8,9 11:6,13 11:22 12:11,15 13:9,11 17:8 18:19,20 coffees 18:19 coin 39:9 85:4 coined 14:16,18,25 17:5 18:11 colors 55:18 come 7:8 18:4 20:21 27:21 28:3 28:8 29:13 31:12 31:17 46:14,19 48:20 68:13 72:9 80:6 comes 42:2 45:21 78:19 coming 19:4,6 31:15 62:7 93:25 comments 61:4	71:3 commercial 62:20 62:22 common 24:17,22 25:2,4,8 55:19 community 19:20 19:21 23:23 35:23 37:10 74:11,19 78:2 90:21 companies 11:13 26:18 50:4 94:22 company 6:7,8,10 6:14 8:11,21 11:6 16:14 21:9 43:7 66:14,15 72:24 compensation 83:12 competition 29:7,8 30:17 31:25 competitions 32:5 32:7 33:13,14 41:6 competitive 63:6 76:3 competitor 37:14 37:15,18,21 competitors 68:17 complete 81:10 Conan 39:2 40:8 41:10 Concourse 5:21 concrete 43:13 confidence 84:25 confused 93:25 94:5,7 Connecticut 2:5 3:7 30:9 31:14 Connecticut 1:17 connection 32:12 89:5 consider 39:16 considered 18:10 18:15 20:13,14 32:15,16 33:10 48:12 51:23 52:6 59:10 Consistently 59:24	consisting 35:7 64:10,16 98:13 consulting 11:12 contact 70:6 contacted 16:3 81:24 contest 57:16 72:8 continue 20:17 40:3 continued 32:7 conversation 15:22 37:6,8 conversations 49:5 convinced 54:10 cool 11:23 29:19 31:20 35:2 57:25 67:20 corporate 39:21 76:19,22 77:9,22 correct 5:16 32:6 34:3 45:20 60:4 67:13 82:4 86:22 87:2 90:15 93:4 93:16 94:9,15,18 94:23,24 95:2,21 95:23 96:12 97:10 corrections 97:11 country 9:18 16:20 81:25 COUNTY 97:4 100:5 couple 86:15 90:5 course 13:4 18:16 22:4 28:5 48:17 52:17 60:18 89:12 court 5:9,15 15:14 crack 42:20 43:22 crap 64:2 crazy 61:23 create 9:11 10:6 25:2,9 43:22 69:18 78:20 created 74:18 creating 69:17 88:7 creators 94:6 cred 34:24 35:2 credibility 76:5
--	--	---	--	---

credit 26:4 crew 29:14 criminal 13:3,5 cross 79:22 CrossFit 6:21,23,25 7:15,17,18,22,25 7:25 8:3,4,9,22,24 9:5,7,8,13,15,23 9:23 12:14 13:14 13:15 15:2,2,8,20 17:16,19 19:19 20:5,8 21:7 22:15 22:17 23:6,7,12 23:23 24:17,22,25 24:25 25:4,5,5,7,9 25:11,13,19,22,24 26:12,13,15,18,19 26:21,21 27:3 28:11,21 29:7 30:8,11 31:7 32:12,15,17 33:5 33:10,12,13 35:23 36:17 37:10,17,21 38:4 39:2,8,20 40:7,24 41:3,11 41:16,18 42:9 44:10,25 46:6 48:8 49:22 50:18 50:21 51:19 52:9 52:12 53:2,7 55:7 55:7,11,14 56:2 56:14,20 58:13,14 58:18,19,23,24,25 59:2,4,11,14,19 61:2 62:2,5,8,9,9 62:13,15 63:5,6 66:17 74:19 77:25 80:17,17 81:2 84:5,20 87:16 88:4 90:20,25 93:14,17 98:19 CrossFit's 61:25 62:2 CrossFit.com 34:7 59:18 60:24 61:4 crutches 79:22 cup 11:22	current 6:3 customer 39:23 76:23 77:4 cwinsor@whipgr... 3:10 cyberspace 19:25 <hr/> D D 98:2 damn 38:18 50:11 52:23 61:21,21 Danyo 1:24 2:6 100:7,21 date 35:9 45:11 53:20,23 56:3 64:12,18 71:23 82:18 99:4 day 11:17 22:20 29:25 49:14,15 53:12 54:20 61:22 72:18,21 76:10 97:18 99:23 100:19 day-to-day 63:15 days 89:24 96:11 deal 28:23 58:20,20 68:5 71:15 73:16 75:8 dealer 62:20 Dealing 11:20 dealt 77:13 December 71:22 72:3 98:23 decided 69:24 85:4 declined 96:7,9 dedicated 13:20 define 10:7 defined 69:19 definitely 42:7 50:14,16,19 61:20 64:3 66:8 75:10 91:21,22 deliveries 77:3,3 demand 22:25 demographics 10:16,17 density 23:3	Depends 53:11 deposition 1:15 2:2 5:4,14 82:16 83:4 87:8 95:11 97:9 98:25 99:1 100:11 100:12 describe 30:21 designs 40:5,6,14 development 86:24 96:4,7 diameters 43:9 45:17 dick 34:22 diehards 42:12,16 difference 73:11 different 22:20,23 22:25 23:2 29:22 33:21,22,25 38:14 40:14 41:9 45:16 45:17 75:3 79:5,6 79:16 87:9 93:8,9 93:9 95:9 difficult 28:18 dinner 28:5 direct 39:23,23 77:4,6,24,25 direction 23:13 87:17 directions 84:2 98:7 directly 21:15 49:6 directors 15:8,20 23:22 disappear 27:19 discipline 10:3 discuss 70:21 disrespect 74:12 distribute 9:18 22:12 document 35:7 56:5,7 64:10,16 64:22 65:3 71:18 82:25 98:13,20,21 dog 41:10 doing 7:16 11:12 11:21 16:4,5 26:4 29:23 32:23,25	34:10,10 39:19 44:24 48:4 52:24 57:24 59:11,12,12 59:14 63:8,10 70:24 76:13,24 83:24 92:4,6,10 92:19,21,24 dominated 43:5 door 17:3 double 12:24 14:8 Dramatically 21:21 Driver 50:5 drop 41:25,25 43:18 49:14 50:8 dropped 43:22 95:2 95:14,17 drove 29:16 drug 18:23,25 dude 35:3 dug 21:22,24 duly 4:3 dumb 39:3 durable 50:7 <hr/> E E 4:2,2,2 86:2,2,4,4 86:4 98:2 99:2 100:2,2 e-commerce 78:3 e-mail 20:9 70:20 71:20 72:2,4 74:4 74:6 83:10 84:16 84:19 92:14 98:22 e-mails 72:14 83:11 earlier 35:21 76:18 87:7 95:11 early 87:22 earned 14:10 easily 43:21 66:5 East 30:8,25 31:2 Eddie 79:6,7 edition 66:18 effective 63:17 effectively 52:2 eight 21:11 81:12 81:16,17 either 13:2,2 51:6	elaborate 75:14 76:21 elements 49:20 52:6 embraced 33:11 emotional 89:5 employees 22:11 encourage 42:7 energy 84:8 England 30:11 enjoyed 32:9 environment 84:8 equal 50:14 equipment 49:8,17 49:24 51:8,19 equivalent 50:12 ERRATA 99:1 escapes 8:14 especially 77:16 ESPN 23:16 ESPY's 23:10,14 90:7 ESQ 3:8,10,17 establish 22:3 established 75:25 Europe 48:16 European 49:16 EV 98:12 event 13:12,21 20:11 21:7 22:25 23:11 36:14 52:23 53:5,5,11 58:7,7,8 78:5 93:3 events 8:25 20:13 22:16,17,21 23:5 23:7,9 31:13 36:13 37:22 52:8 52:11,12,14,19 55:2,3,5 63:23 90:3,6 93:15,15 93:18 everybody 30:9 everyday 9:24 evidence 35:5,8 45:11 53:20,22,25 54:13 55:23 56:2 64:11,17,20 65:3
---	--	---	--	---

71:18,23 82:14,17 86:9 evolving 46:11 exact 8:13 Exactly 93:7 EXAMINATION 4:6 86:13 98:3 examples 19:8 exciting 32:9 exclusively 9:14,22 Excuse 89:20 exercise 49:25 exhibit 35:5,6,11 45:8,9,13 53:18 53:21,25 54:14 55:23,24 64:7,9 64:13,15,21 65:2 67:12 68:7 70:11 71:19,20,25 82:13 82:15 98:13,15,16 98:17,18,20,21,22 98:24 EXHIBITS 98:11 expect 75:12 expected 84:20 expensive 18:3 experience 77:8,9 77:21,22 experimenting 9:12 explain 93:21 explaining 7:18 exposure 95:7 extend 31:23 62:14 extended 25:13 32:10 extendedly 11:15 extent 75:25	fair 89:4 91:14 96:2 96:5 fairly 37:25 fall 31:25 32:2 falling 86:19,25 91:24 familiar 65:5 family 20:13 famous 36:23 far 50:25 farmer 52:5 fast 22:5,7 59:9 68:11 faster 80:18,19,21 fee 9:9 feel 5:13 14:10 27:14 38:22 71:5 92:11,14 felt 31:19 48:21 52:22 53:8 92:2,3 92:17 female 10:20 field 48:11 fighting 18:10 19:22 fight 19:21 figure 31:9 49:7 60:15,19 82:10 figuring 76:14 filed 18:6 filled 27:14 film 23:22 finally 43:14 75:9 76:12 financial 7:23 find 31:16 38:21 39:11 45:2 49:11 fine 21:3 first 4:3,19 12:17 17:14,20,23 21:17 21:18 22:3 23:11 23:25 24:12 29:4 36:16 38:17 40:6 41:2 47:12,14,16 48:19 49:5 53:5 54:7,18 60:10,13 62:12 63:5 65:8	65:12,14,24 66:2 66:5 67:23 76:25 91:18 fitness 10:2,3,24 11:2,4 37:7 46:3 55:25 56:8,11 57:17 60:20 84:18 98:18 fitness-related 11:13 Fitzgerald 26:9 five 22:21 46:6 flip 41:14 42:22 flipping 33:21 62:22 flooding 74:10 Floor 3:15 Florida 51:2 Flower 3:15 flown 84:15 fluctuating 27:23 follow 20:20 77:4 follow-up 86:15 following 76:2 follows 4:5 86:5 Ford 62:19,22 foregoing 97:8 Forged 27:2,2 formal 5:8 forth 72:18 100:11 found 11:22 46:6,8 founder 6:25 7:15 four 25:18 fourth 37:16 frame 69:13 fraternity 23:25 24:3 58:15 free 5:13 12:25 16:20,20,21 fresh 32:9 Friday 11:10 30:6 30:7,15,16 Fridays 32:8 friendly 30:18 friends 8:21 fuck 12:7,7,7,8,10 12:12,16 14:21,22	17:21 18:11,12 fuck-up 14:16,17 14:18 17:6,6,8,9,9 17:11,11,20 72:7 72:11,12,17 fucking 71:11 full 4:10,12 41:11 78:19 fun 13:23 14:2 30:14 31:21 32:8 34:17 63:4 funny 19:19 FURNISHED 98:9 further 96:13 100:14	49:18 50:10,11,18 50:20,23 53:4 62:3 71:11 78:5 82:8,9 85:4 92:19 going 16:4 19:24 30:22 31:10 34:16 35:4 38:15 39:7 39:21 40:17 42:5 42:6,9 45:4,7 51:17,18 53:11,24 54:13 55:12,22 58:7 62:21 64:19 67:2 68:18,20 71:16,17 75:6 76:15 85:3 86:6 92:19 good 4:8,9 27:25 28:7 33:5 38:22 52:22 61:13 71:14 78:9,13,15 83:18 84:22 Goodbye 67:10 Google 11:21 79:16 79:18 gotta 27:22 28:4,4 47:5 Grand 5:21 grandmother 11:3 graphics 73:18 great 16:25 57:23 86:11 Greg 6:24 7:13 grew 9:23,24 24:5 79:5 grid 80:13,15,16 82:3 Group 2:4 3:4 4:25 groups 48:14 growing 68:11 grown 26:20 growth 24:10 guess 8:5,9 16:19 81:2 82:6,11 83:22 84:15 guy 21:2 26:8 28:11 28:23 29:5 32:20 34:22 41:12,13
F F 16:6 42:13 86:2 100:2 Facebook 28:24 34:21 facing 72:6 fact 55:10 69:15 74:10 75:3 78:4 92:11 94:7			G gaining 75:11,11 games 12:14 13:14 13:15 20:12,23,24 21:6 37:17,19,20 53:2 55:7,12,14 61:2 67:8,23 70:16 84:6,21 general 31:7 generation 42:15 gentleman 32:22 getting 68:24 69:23 gift 23:18 Ginger 17:9 Gingered 14:18 girl 28:4 give 23:19 26:3,22 47:5 59:19,20,22 given 70:20 100:13 giving 83:15 glance 66:5 Glassman 6:25 7:13 8:4 GM 84:10 go 8:25 18:5 19:11 19:13 20:20,21 22:21,24 27:11 28:4,4 29:15 30:19,23 31:11 38:24 40:21 45:2 47:7 48:5,8,21	

61:15 71:12 75:23 83:18 guys 77:15 87:23 87:24 gym 6:8,20 9:15 22:14,15,16 24:17 24:22 25:2,4,9,13 27:3,6,13,17 28:3 28:11,12,14 29:17 41:3,15 45:14 46:12,13,18 47:17 47:19 48:5,21 49:8,18 51:17 54:21 60:16 66:14 66:21 68:2,10,10 68:19 89:14,16,23 93:14,18 gymnastics 81:6 gyms 24:18 45:24 50:18,21,24 51:9 51:12,14,16,19 52:8,18 67:16 68:12,15	hands 78:7 87:21 hang 31:17 35:2 happen 8:7 42:23 happening 46:2 58:12 62:11,11 happy 53:10 63:25 hard 16:20 21:8 28:17 38:12,14 40:14 42:11,20 Harlem 6:21,23 7:2 8:2,24 9:5 22:15 34:25 46:20 80:14 hate 72:15 hated 54:8 hats 42:3 he'll 29:6 71:15 head 25:17 34:22 40:15 76:14 heard 49:5 93:17 hearsay 49:6 heavy 80:20 held 2:3 49:2,3,13 60:17 hell 19:24 20:7 52:23 61:6 64:2 68:18 help 9:18 57:17,19 59:21 74:5 77:23 hereinbefore 100:11 hereunto 100:18 hey 28:9 29:10,15 30:22,23 47:25 57:16 58:5,6 66:16 67:19 71:11 72:9 93:19 94:21 highlighted 59:22 hire 42:24 hit 21:7,15 29:20 43:14 Hobo 75:2 hold 37:6,7 49:8 honor 84:6 hope 84:21 hot 17:2 24:9 hotel 84:12 hotter 28:25	hour 42:25 hours 30:14 house 15:22 hug 14:2 21:9 22:10 43:15 58:20 79:4,15 hundred 25:18 40:19 68:20 hundreds 38:13 Hy 69:11 Hybrid 1:7 5:2 26:7 30:3 35:6,7 35:14 36:2 37:23 39:4 41:19 44:6,7 44:9,12 45:9,18 46:16 51:11,15 52:20 53:18,18,21 54:5,17 55:21,24 56:16 59:25 60:3 61:19 63:12 64:2 64:9,15 66:6 69:12,16,18 70:6 71:7,20 73:9 74:17,23 75:5 82:15 86:24 88:3 88:7,18,22 89:5,7 89:9 93:19 98:12 98:14,16 99:4 Hylete 1:10 4:21 5:3 64:10,16,23 65:4,5,8,15 66:5,9 66:22 68:8,15 69:11,16 70:10 71:21 72:3 73:10 73:20 74:23 75:6 80:10 82:3,8 91:18 93:19 95:8 95:20,24 98:20,21 98:23 99:4 Hylete-effective 64:6	image 15:5 38:12 38:15,17 45:13 78:23 images 38:14 immediately 69:3 72:14 84:7 92:12 importance 38:3 43:25 important 27:7 38:7 39:10,25 40:3 79:13 impression 65:14 68:14 94:10,14 incorporated 8:13 industry 23:20 INFORMATION 98:6 infrastructure 22:11 inherited 15:2 instructional 59:21 INTELLECTUAL 3:13 interactive 32:20 interested 100:16 interesting 20:8 66:23 invitation 29:6 invitations 22:18 23:6 invite 31:19 invited 7:3,8 involved 71:16 86:23 IP 2:4 3:4 4:25 Iron 79:5 issue 7:23 84:24 issues 57:21 73:16	January 27:18 job 1:25 6:3 48:13 Joe 1:24 John 3:17 4:18 Joseph 2:6 100:7 100:21 judge 5:7 July 1:18 2:5 56:23 99:4 jump 63:3 June 27:19
H	H	H	J	K
H 36:3,8 37:23 39:4 40:2,9,10,10 41:20 42:2 45:19 46:22 47:10,16 48:23 52:20 55:21 60:18 61:19 64:25 65:5,9,15 66:4,9 66:22 68:8,9,12 68:15 69:13,14,24 70:6 74:17,20,22 74:23,23 75:4 86:24 87:10,14,25 88:5,18 90:15,19 90:22 91:10,13,13 half 59:15 hammered 30:13 Hampshire 51:5,5 hand 13:25 27:11 27:12,25 28:2 100:19 handball 15:13 handle 71:14 73:15				keep 33:8 39:7 44:13,15 45:4 keg 60:8 kegs 29:18 kept 15:24 44:2 71:3 kids 31:20 32:23 33:2 42:12,14 Kill 72:25 Kilos 11:14 25:19 kind 7:17 10:2 11:23 13:23 14:18 14:20,23 15:5 16:20,22,25 17:16 19:21 21:22 22:15 23:11 24:4,6,6 27:19 28:16 29:4 29:8,14 31:4,6,10 32:20 33:17 34:5 34:23 46:10 48:6 48:19 52:22 56:15 57:21,23 61:23 62:3,21,23 68:21 71:3 73:6,12,19 76:13,24 77:5,8 77:20 79:4 81:6 95:14 kinds 20:16 33:25 76:4 93:15 King 55:25 56:14 56:20 59:4 98:19 kiss 78:8 kit 44:17 knew 7:8,10 21:22

58:15 69:12 78:4 78:6,7,7 knocked 47:9 know 7:9 9:24 12:4 15:21 16:4 17:17 19:24 21:14 22:20 25:21 26:3,11 27:21 28:20,24 29:22 30:21 31:20 33:3,6 34:6,11,15 35:11 38:16,23 39:5 42:4,16,24 44:3,9 46:2,16 47:2,24 49:4 50:22 51:24 52:22 57:16,23 58:13 60:14 62:19 63:16 63:24 65:18,21,23 66:14,24,25 67:17 67:20 68:17,18,22 68:23 69:8,14,14 71:3,25 73:5,7,8 73:13,19 75:13,21 76:11,12 77:14 78:7 83:3,18,20 83:21 84:21 95:3 95:5,7,16 96:9 known 16:6,7 35:17,20,23 37:20 58:10 64:4 knows 24:13,15 Konica 77:12,12 Kosma 3:8 4:7,16 4:22,24 35:4 45:7 55:22 64:7,13 71:17 80:5 82:13 85:12 86:6,11 90:16 91:11 98:4	lawyers 72:19 Leading 54:24 60:5 69:5 70:7 league 82:3 left 12:19 47:11 legal 5:8,9 legislated 41:7 let's 17:19 29:15 30:19,19,19,23 36:5 60:12 67:21 71:11 72:9 73:23 73:24,24 78:13 80:5 level 40:17 licensed 9:8 41:5 life 8:22 9:25 26:22 26:23,24,25 29:22 lift 34:12 lifted 42:18 lifters 25:24 lifting 34:2,13 43:2 81:6 lighter 43:10,12 liked 34:24 54:22 line 18:22 66:17 74:6 99:6 listen 48:2 66:16 73:23 literally 22:24 50:8 little 9:16 25:23 28:25 40:10,11 43:18,19 44:22 47:14 51:6 54:11 68:21 75:23 77:14 93:13 live 78:15,18,20,22 88:14,16 livelihood 6:5 living 76:6 LLC 1:7,10 4:21 71:21 98:23 99:4 99:4 local 22:17 49:12 62:20 log 40:11 44:18 52:4 logo 18:17 35:7,14	35:17 63:21 64:10 64:16,23,24 65:4 65:6,9 66:20 71:6 78:23 88:11 91:10 91:18 93:19,19 98:13,20,21 logos 79:20 90:14 91:5,16,17 94:8 logs 36:20 49:10 long 19:19 27:16 34:14 81:9 longer 43:19 longevity 17:16 34:13 look 17:13 59:25 70:11 82:8 91:4 91:13 94:21 looked 43:4 61:21 68:13 75:17,22 Looking 60:12 looks 17:22 21:16 60:20,21 64:25 69:13 72:3 74:25 93:19 loop 32:19 70:22,23 73:14 92:18 Los 3:16 lot 19:22 20:18 21:5,12 22:23 23:21 26:18,19 29:21 36:18,19 42:14,14 43:2 50:4,18 52:21 53:13,14,15 54:21 54:22 58:24 60:23 67:16 68:12 77:10 81:22 83:11 88:23 89:16,23 90:9,11 91:17 93:14 love 38:16 loved 84:24 loves 84:24 Luncheon 85:16	4:15 magazine 57:13,15 58:19,22 59:2 63:7 magazines 58:24 magnitude 57:5 Maiden 79:5 main 6:5 12:6 16:19 Maine 31:15 51:4,4 mainstream 15:4 24:6,9 42:10 58:19,21 62:3,10 63:7 majority 53:4 making 12:10 19:4 43:6 75:19 77:2 84:14 Malcolm 79:10 male 43:4 man 15:12 27:22 48:2,13 57:24 73:23 March 8:15 9:3 mark 35:4 38:9 45:7 55:22 64:7 64:13 82:13 marked 35:10 45:12 59:25 64:20 65:2 71:18 market 9:9 16:21 16:21 21:5 marriage 28:2 100:16 Martinez 1:16 2:2 4:1,12,24 5:1,20 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1,10 36:1 37:1 38:1 39:1	40:1 41:1 42:1 43:1 44:1 45:1,12 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1,24 54:1 55:1 56:1,4,7 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1,19,22 65:1 66:1 67:1 68:1 69:1 70:1 71:1,24 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1,9 81:1 82:1,19 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1,7,15 98:1,4 99:5,21 100:1,10 matter 5:2 55:10 63:9 100:17 mean 8:6 9:22 10:13 17:25 18:12 19:14 21:10,21 22:10,11 31:14,21 32:25 36:6 37:2,4 37:11,20 39:18 40:24 44:2 57:20 58:22 59:7 61:25 62:7,11 63:8,13 63:22 64:3 66:11 66:24 67:15 68:6 68:16 69:8 74:24 75:2,25 76:21 82:6 91:4 95:3 meaning 44:9 58:23 62:2 means 13:3 23:2 44:6 71:7 media 11:15 15:7 15:19 72:14 meet 7:2,12 30:8 31:9 47:4 48:22 members 24:25
---	--	---	---	--

L

L 3:10

label 13:10

late 65:13 70:13

75:10 91:19,20

launch 12:14

launching 13:7

LAW 3:13

M

M 3:17 4:2 86:4

M-A-R-T-I-N-E-Z

25:6 memento 28:9 memory 90:18 mention 66:3 mentioned 10:23 11:5 22:14 24:16 27:5 28:19 35:16 35:21 39:15 40:23 42:9 45:18 47:22 52:7 54:18 65:25 66:7 76:18 86:19 87:7 88:6 89:13 94:25 95:6,11,19 merger 41:11 met 7:10 28:21 39:19 47:3,19 67:7,22 Metro 77:19 Michael 3:8 4:24 middle 43:11,23 Milford 30:8,9,23 30:24 36:17 mine 9:10,12 80:4 81:12,15 minute 56:4 84:11 minutes 86:17 mistakes 5:17 mixed 8:23 mkosma@whipg... 3:8 MMA 68:3 mold 41:24,25,25 43:15 45:22 molds 43:6,25 51:11,15 mom 42:17,18 money 75:15 month 8:14 11:15 23:10 27:12 months 21:11 morning 4:8,9 12:18 20:3,4 33:20 mother 11:3 28:10 mother's 15:22 move 91:14 movie 12:3,5 16:25	79:21 moving 23:13 68:7 87:9 mug 12:11,11,23,24 13:9,16 mugs 12:15 13:20 Muscle 50:5 55:24 56:8,11 57:17 98:18 muscling 52:2 <hr/> N <hr/> N 4:2,2 86:2,2,2,4,4 98:2 nah 67:21 name 4:10,12,14,18 4:19,20 6:9,13 9:5 9:7,13 16:14 24:25 26:8,9 39:9 42:3 named 11:6 41:10 names 41:9 narrative 16:17 19:10 27:10 36:11 nature 43:12 58:5 near 50:11 necessarily 16:23 19:22 22:13 25:24 38:11 45:2 61:12 62:6 71:10 76:9 84:10 need 29:11 48:3 92:11,14 needed 49:19 negative 61:8,9,11 61:13 nervous 84:8 network 53:7 never 7:10 28:14 29:11 31:8 38:16 42:18 90:18 new 2:7 5:22 17:18 28:22 30:11 31:6 32:9 46:4 48:16 51:4,5 85:2 97:2 99:2,2 100:3,5,8 nice 85:4	night 33:21 Nike's 40:16 noise 44:15 non-CrossFit 58:25 NorCal 26:12 North 81:24 Northeast 51:6 81:14,14 Notary 2:7 4:4 97:22 99:25 100:8 noted 86:3 96:17 notice 40:8 60:10 60:13,18 82:16 98:24 noticed 12:18 60:2 November 8:12 11:9 number 7:24 72:13 numbers 21:7 95:4 nut 42:20 NYNEX 77:11 <hr/> O <hr/> O 86:2,2,2 obey 21:2 obeying 20:25 Objection 10:9 14:6 16:16 19:10 22:8 24:19 25:14 27:9 32:13 33:18 35:18 36:10,24 38:5 41:21 46:23 50:2 54:24 57:7 59:5 60:5 62:16 65:16 69:5 70:7 78:10 90:16 91:11 obligation 5:10 obscene 18:11 Obstacle 52:17 OCR 52:14,16 90:7 offensive 18:15 20:15 OFFICE 1:2 offices 2:3 oh 11:23 17:2,22,22 20:7 24:3 26:25 27:22 28:4,5,5	45:2 55:9 56:6 57:24 60:15 70:9 73:2 Ohio 6:2 okay 6:13,19,22 7:6 7:14 8:8,20 9:6 13:18 14:12 16:13 18:6 19:17 21:3 23:17 26:2 27:5 27:17 30:5 34:4 38:15 46:7,9 52:18 56:18 68:7 70:12 73:4 86:11 86:18 87:19 88:8 91:9 93:21 old 5:23 older 32:22 Omnipoint 77:18 once 19:24 34:8 40:2 67:7 ones 52:3 61:9,11 61:13 online 9:17 48:4 55:4 onsite 20:25 22:12 23:9 open 13:17 16:21 16:21 21:5 83:10 opened 47:14 OPEX 26:11 opinion 32:11 36:23 37:25 65:24 74:3,12 84:13 85:2 opportunity 5:16 Opposer 1:8 3:5 Opposer's 82:16 98:24 opposite 84:2 Opposition 1:8 OPT 26:10 Order 2:3 organically 26:20 origin 7:18 original 19:3,5 originality 16:19 38:8	Orlando 7:5 26:5 28:19 36:23 37:9 39:17 40:23 41:19 59:4 60:2,13 61:18 62:14 71:21 85:9 98:22 Orlando's 31:23 32:12 out-of-towners 28:8 outcome 100:17 outdo 38:19,19 outfit 82:7 outlook 29:22 outperform 33:9 outrun 33:9 outside 15:10 23:11 26:18 52:11 overseas 48:16 owned 22:14 34:7 owner 25:2,5,9 66:14 owner's 68:10 owners 25:21,22 66:22 68:2 owns 21:18 <hr/> P <hr/> p.m 86:3 96:17 page 60:12 97:11 98:3 99:6 pages 59:25 97:8 paid 14:8 park 12:4 15:10,13 parking 20:18 36:18,19 part 7:21,24 14:12 16:13 27:25 42:10 49:21 53:6 65:21 67:6 71:4 76:6,15 83:21 participate 22:16 particular 16:8 20:14 26:14 48:11 75:7 parties 20:23 100:15
--	---	---	---	---

<p>pass 64:19 65:2</p> <p>passing 58:6</p> <p>passive 76:8</p> <p>PATENT 1:2</p> <p>path 45:2,4</p> <p>pay 9:9 12:24</p> <p>PCS 77:19</p> <p>pegboard 47:14</p> <p>penetration 23:2</p> <p>people 7:9 9:17,24 13:10,22 14:20,22 15:24 17:17 19:6 21:21,23 22:22 23:2,3,19,21,22 24:8 25:6,25 28:3 28:8,25 30:10,12 31:12,15,16 37:4 39:12 41:14 44:6 46:3,14,21 47:5 48:3,14,20 53:4 54:21,21 57:3,5 57:12 58:15,16 62:7,12 64:4 68:4 72:15 73:6,10,16 78:21 84:13,15 91:7,8 93:8,24 94:5,15,20</p> <p>percent 21:14 25:18 40:19 68:20</p> <p>perfect 28:2</p> <p>periodically 49:3</p> <p>person 11:3 49:12 49:12 58:19 59:12 76:8</p> <p>personable 32:20</p> <p>personally 7:2 8:7 46:5 89:3</p> <p>personnel 8:7</p> <p>Phoenix 51:2</p> <p>phone 13:9 20:4 59:15 70:20 76:25 77:2</p> <p>photograph 45:10 98:15</p> <p>photographer 15:11</p> <p>phrase 14:16 15:21</p>	<p>16:8 78:16</p> <p>phrases 17:7</p> <p>pick 14:20 42:21 49:14 79:22</p> <p>picking 33:22 66:12</p> <p>pickups 62:23 63:3</p> <p>picnic 30:20</p> <p>picture 15:8 20:4 46:14,22 47:12 48:22 60:7</p> <p>pictures 21:25 36:4 60:3,9 80:4</p> <p>piece 17:4</p> <p>pisses 38:20</p> <p>place 5:25 30:3 37:16 45:5 47:8 94:8</p> <p>places 49:11 75:12 79:16</p> <p>plastic 50:6,6</p> <p>play 62:23</p> <p>players 81:4</p> <p>playing 29:18</p> <p>please 4:10,17 5:13 56:5 64:8 71:24 82:22</p> <p>plenty 23:5</p> <p>plummeting 28:16</p> <p>Plus 21:9,16</p> <p>pocket 85:4</p> <p>point 14:9,9 39:5 77:13 87:12 91:24 92:18 93:6,22 95:19</p> <p>pop 79:15</p> <p>popping 81:22,25</p> <p>popular 18:5 34:4 34:18 37:25 38:2 49:9 66:13</p> <p>positive 61:7</p> <p>possible 42:8</p> <p>possibly 39:13</p> <p>post 29:2 33:17</p> <p>posted 15:20 34:21 60:24</p> <p>posting 28:25 61:4</p>	<p>72:13</p> <p>potential 24:10</p> <p>pounds 50:12</p> <p>pours 43:16</p> <p>preach 58:25</p> <p>preaching 76:7</p> <p>present 5:7</p> <p>pretty 10:21 21:8 24:14 29:19 30:25 50:12 59:10 68:11 72:10 87:20 88:24 93:23</p> <p>prevents 22:6</p> <p>primary 10:19</p> <p>private 13:10</p> <p>pro 81:16,17</p> <p>probably 8:15 15:3 21:10,13 25:16,17 47:13 52:13 77:7 82:9,10 83:10 89:24 92:3</p> <p>problem 39:7 61:3</p> <p>proceeding 5:8</p> <p>product 13:8</p> <p>products 93:9 94:6 94:7,15</p> <p>professional 81:2 81:12 82:7,8,12</p> <p>profit 95:5</p> <p>Progenics 84:18,23</p> <p>programing 33:23</p> <p>prominent 52:25</p> <p>promote 9:10</p> <p>promotion 14:4</p> <p>promotional 12:13 13:12</p> <p>PROPERTY 3:13</p> <p>Public 2:7 4:4 97:22 99:25 100:8</p> <p>puffs 79:9</p> <p>pullups 34:19</p> <p>pursuant 2:3</p> <p>push 57:25 63:3</p> <p>pushback 41:4</p> <p>pushed 55:4</p> <p>pusher 40:12</p> <p>pushing 44:13,15</p>	<p>put 15:8 19:18 29:6 35:5 43:11 53:24 54:13 62:21 72:8 74:20 75:6 79:4 80:2,3 85:3 86:7</p> <p>puts 41:23 42:2</p> <p>putting 40:2</p> <hr/> <p>Q</p> <hr/> <p>quantified 69:20</p> <p>question 10:11,14 67:23</p> <p>questioning 87:8</p> <p>questions 5:5,13 76:14 85:12,15 86:16 96:14</p> <p>quick 80:5</p> <p>quite 91:15</p> <p>quotes 74:20</p> <hr/> <p>R</p> <hr/> <p>R 4:2,2 86:2,4,4 100:2</p> <p>racing 52:17</p> <p>rallying 84:10</p> <p>ran 44:23</p> <p>random 36:6</p> <p>ranked 37:9,20</p> <p>rarely 61:23</p> <p>read 5:16 56:14 74:7,13 82:22 97:8</p> <p>ready 27:20</p> <p>real 23:25</p> <p>realized 70:16</p> <p>really 9:10 13:8 14:3 24:12 26:16 26:17 29:11 32:19 33:11 37:4,6 39:11,11 40:15 41:5 42:13 56:14 57:20 58:16 62:10 65:18,23,23 66:25 69:25 70:2,14,22 71:7,9,13 72:15 73:10,12,13 78:14 78:15,17,18 87:10</p>	<p>89:8 90:18 95:3 95:12 96:9</p> <p>received 35:8 45:10 53:19,22 56:2 64:11,17 71:22 82:17</p> <p>receiving 83:12</p> <p>recess 53:16 80:7 85:16</p> <p>record 4:11 86:7 100:12</p> <p>Reebok 19:11,13 21:9</p> <p>Reebok's 21:19</p> <p>REF 99:5</p> <p>refer 40:25 50:9</p> <p>reference 69:13</p> <p>referred 8:22 11:14 41:18 44:8 59:4</p> <p>referring 56:19 67:12 72:23</p> <p>regional 93:3,15,18</p> <p>regionals 20:12 21:6 28:22 37:13 37:19 55:7 66:11 70:15,18 93:24 95:20</p> <p>registered 41:5</p> <p>reinvent 44:4</p> <p>relate 78:22</p> <p>related 100:14</p> <p>relationship 31:23</p> <p>release 20:23</p> <p>Relevance 14:6 33:18 50:2</p> <p>remember 56:23 57:2 77:12 83:7</p> <p>renamed 26:10</p> <p>repeat 5:14</p> <p>rephrase 5:14</p> <p>reported 1:24 21:10</p> <p>Reporter 2:6 100:7</p> <p>represent 5:2</p> <p>representing 4:21 77:10</p> <p>request 66:19</p>
--	--	---	---	--

REQUESTS 98:6 98:10 research 16:23 68:21 reserved 33:6 respect 89:2 resumed 86:5 retarded 63:4 79:23 reveal 45:17 review 56:5 71:24 reviews 82:25 rid 15:6 ridiculous 29:3,3 61:3,5 74:2 right 6:18 8:14 9:2 13:17,19 16:11,24 17:6,24 18:24 24:8 34:6 37:2 38:9,12,16 42:2,6 43:21 44:11 45:21 45:21 46:2,12,13 48:13 61:15 63:4 70:17 71:5,8 74:13 75:3 83:16 83:16,24 87:11 90:6 94:16 95:10 rings 60:17 ripping 59:15 Rob 7:3,4,5,7 26:5 28:19,20,21 29:20 30:10 32:15,21 33:17 34:7,15 35:2,16 36:14 37:7 38:25 39:15 42:10,16 44:3,3 46:8 47:3,3,4,25 48:22,24 51:25 56:13 57:21,25 58:3 59:7,23 60:9 60:24 61:9,25 62:2 63:5 64:4,5,5 65:19,25 66:3 67:18 69:12 70:6 70:16,17,17 71:11 71:21 72:2,5 73:8 73:21 75:12,13,23	76:11 83:17,25 84:5,24,25 86:20 87:4,8 89:2,7,8 91:24 94:17 95:8 98:22 Rob's 30:3 31:4 47:16 63:11 68:22 69:4,8 89:16 94:25 95:12,25 96:3 rocks 42:21 Rogue 50:5 84:16 84:18,24 room 84:12 rope 60:16 rough 90:17,17 rule 21:2 rules 20:25 21:2 RULINGS 98:8 run 6:7 33:4 47:4 59:9 running 59:8,9 Rx 26:23 S S 4:1,2 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1	72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1,2,2 86:2,4 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 100:1 S-Y-N-C-E-R-E 4:14 safe 88:17,21 96:3 96:6 SAG 81:21 sale 27:15 sales 21:20 27:7 39:22,23,23 76:19 76:22 77:9,17,23 77:24,25 94:25 95:4,17 salesperson 77:5,6 samples 11:17 sanctify 76:16 sandbags 29:18 sat 73:12 Saturday 20:2 Saturdays 29:12 saw 16:25 17:20,20 47:19 54:18 55:3 55:6,20 58:5 64:4 65:12,24 66:2,7 68:2,13,14 70:14 70:14 75:10 91:18 91:23 92:22 93:2 saying 37:14 76:8 84:19 94:21 says 14:24 38:9 56:16 60:19,20 69:15 74:8 scatterbrained 44:22 87:13 scene 32:21 sealing 86:8 search 11:21 searches 79:17,25 80:2	seasonal 27:15 seasonally 27:14 second 47:10 74:6 secondary 19:6 see 13:24 17:10 22:2 28:4 29:15 30:19 34:8 36:6 37:22 40:8 42:25 45:3,25 46:2 47:16,18 50:4 51:8,11 52:20,21 53:5,9,10,13,14 53:15 54:19,23 55:15 57:24 58:18 60:23 61:23 63:7 63:20 64:5 65:8 66:9 68:3 75:12 75:13 76:11,15 77:20 83:22 89:9 89:11 90:9,11,21 93:12,13 95:20 96:10 seeing 66:21 68:8,9 68:12,19 70:6 73:7,8,20,21,25 75:13 83:7 94:14 94:22 95:24,25 seen 12:4 36:2,4,5,5 36:6 45:13 54:2,6 56:9 57:4 69:11 75:9 77:15,15,18 79:15,19 82:19,21 90:13,14,18,20,22 90:23 91:2,6,7,9 91:15,17 self-employed 6:4,6 selfie 46:20 selfishly 83:22 sell 8:25 9:4,6 10:17 20:10,12,17 20:24 21:3 22:5 22:18 23:8 24:16 24:18,23,24 25:3 25:5,10 27:6 55:3 55:3 63:25 73:9 78:5,5 selling 8:16,18	21:23 22:6 26:19 38:18 93:8 94:15 94:22 seminar 47:2 49:8 49:11,13 seminars 47:22 48:25 53:7 send 11:17 20:11 72:4 sending 57:6 sends 20:9 sent 74:4 83:9 84:16,18 separate 17:12 19:2 57:22 83:18 85:5 88:25 89:3 94:4 service 39:24 76:24 77:4 SERVICES 99:1 set 100:11,18 settle 38:12,22 settlement 21:13 setup 75:14 seven 21:11 35:22 81:13,14 sexy 54:11 shake 78:7 shape 27:18 shared 33:14 39:18 Shave 72:25 SHEET 99:1 shelf 13:19,19 ship 49:11 shirt 12:21,25 13:2 15:16,17,25 19:18 20:5,11,17,21 28:5,9 40:8 53:19 54:5,7,12,18,19 54:23 55:15 61:19 61:21,22,24 63:20 66:17 98:16 shirts 8:23 9:13,14 17:10 27:15,16 36:21 42:3 55:6 55:16,19 63:19 68:10,10,19 shit 52:24 73:3,7
--	--	---	---	---

shoes 91:5 short 53:16 80:7 shortcut 82:11 Shorthand 2:6 100:7 shorts 42:3 53:22 54:15,16 60:20,21 67:12,15 68:13 98:17 show 23:16 44:6 46:25 shown 97:11 shows 52:19 side 36:18,19 92:22 92:22 93:2,3,23 93:23,24,24 94:2 94:2 sign 20:20 84:25 signs 49:4 similar 74:22,23,24 92:2 94:21 similarities 29:21 single 18:3 20:9 76:10 sit 71:8 situation 9:17 83:23 six 52:15 size 50:13 skull 11:22 46:19 79:3,8,13,21 80:3 skulls 11:19,20,24 skyrocketing 28:15 slam 50:9 Slater 43:7,8 sleeve 66:20,22 slight 13:25 slogan 18:4 20:14 73:6 78:16 slogans 14:13 72:9 73:18 slowly 62:11 small 24:12 57:12 58:14 smaller 23:3 51:17 smart 48:18 smashing 75:22	SME 48:10 Smoke 11:19 soccer 42:17,17 social 11:15 15:7 15:19 72:14 socially 37:5 society 16:21 socks 91:5 sold 9:14 12:17 21:4,11 26:21 36:9,19,20,20 54:22,23 55:4,6 63:18 93:6 94:8 solid 43:16,16,17 solution 78:3 somebody 92:8 son 20:19,21 28:10 sorry 24:21 55:9 70:11 sort 10:2,25 11:4 11:13 24:7,13 33:15 46:17 49:24 51:3 53:5 57:16 75:24 89:5 source 16:21 South 3:15 12:4 51:7 81:24 Southern 81:20 speak 21:13 25:4 33:7 44:7,12,17 44:19,25 63:14 68:17 80:18 speaking 58:3 speaks 17:17 special 48:21 specialist 48:11,12 specialize 81:5 speculation 10:10 22:9 24:20 25:15 32:14 35:19 36:25 38:6 41:22 46:24 57:8 59:6 62:17 65:17 78:11 speed 66:12 75:11 spell 4:13 16:11 spelled 4:19,20 6:12,15	spin 80:25 spinning 65:22 68:24 70:3,24 92:21 spinoff 80:17 sponsored 7:23 8:4 sponsors 84:17 sporadically 85:10 sports 23:21 spot 10:22 spring 32:3 Sprint 77:19,19 squashed 77:18 squashes 77:19 ss 97:3 100:4 stadium 53:3 stages 87:22 Stamford 1:17 2:4 3:7 25:5,6,7 29:17 47:8 66:17 stand 40:18 standard 51:18 standing 53:2 staring 87:24 start 6:22 8:10,16 11:8,11 16:4 75:18 started 7:25 8:18 9:4,12,22 11:9 12:9 13:8,9 14:19 14:20 17:18 27:3 28:24,24,25 29:17 29:23 40:2 43:5 47:9 57:13,15 66:21 68:8,9,12 75:24 76:13,23 77:7 79:7 95:20 starter 44:17 starting 44:17 73:15 state 2:7 4:10 16:18 32:19 97:2 100:3 100:8 statement 94:20 states 1:2 48:17 stay 69:24 stayed 84:12	stays 18:23 steal 12:22 13:5,16 13:23 stealing 71:12,15 73:6,17 stems 79:3 steroids 80:18 stick 39:3 44:4 45:5 87:4,10,25 88:3,5 stole 13:4 stone 33:22 40:10 41:24 43:6,25 44:18 50:3,3,13 stones 36:20 42:19 43:9,17 45:16,19 45:23 49:10 51:20 52:4 75:19 stood 48:24 stop 38:18 stopped 20:10 stories 39:18 44:21 87:24 straight 73:17 street 2:4 3:6,15 34:24 35:2 99:2 stressful 84:8 strictly 23:7 strongest 59:10 Strongman 29:7,8 32:6,16,18 33:10 33:12,12 36:22 40:24 41:3,4,12 41:17,18,20 44:4 44:10,17,24 48:12 48:14 49:7,12,20 49:21 51:8,23 52:6 62:23 Strongman-type 49:25 stuck 62:5 stuff 8:25 18:14 23:19 29:2,19,23 31:8 33:5 43:2 48:4 49:10,14 53:8 55:18 67:6 77:17 stunning 69:15	styles 10:4 55:18 stylized 90:14 91:9 Styrofoam 43:11 43:20 subject 97:10 Subscribed 97:18 99:22 succeed 89:10 successful 14:4 78:4 Suite 99:2 summer 2:4 3:6 27:20 32:4 Sunday 11:18 12:18 sure 7:10 25:19 40:7,19 42:4 56:6 63:18 65:11,20 68:20,25 71:15 74:9,16 83:24 surprised 90:25 swapping 44:21 sweaty 28:3 sweet 10:22 switch 81:8 swoosh 40:16 sworn 4:4 97:18 99:22 100:12 Syn 13:6 21:25 61:14 86:16 Syncere 1:16 2:2 4:12,13 97:7,15 98:4 99:5,21 100:10 synonymous 39:5 41:17 48:23 78:24 79:12
T				
T 4:2 86:2,4 100:2 100:2 tagging 57:3 take 14:10 17:3 28:9 40:17 46:14 46:19,21 48:22 55:12 56:4 69:23 70:11 80:5 86:16				

taken 2:2 39:6 53:17 80:8 takes 28:12,14 talk 29:22 37:3,4 44:16 47:25 61:10 61:12 69:16 73:24 85:9 talked 69:17 talking 62:19 65:19 70:2,9 71:9 88:7 91:23,25 93:13 tangible 37:2 tank 27:16 tapered 96:4 task 81:9 tasks 69:20 taught 41:14 teach 48:3,6,13 49:19 51:25 teaching 32:17 team 12:3 34:25 80:13,15,22,23,24 81:4,7,13 82:7 teams 81:11,14,16 81:17,18,19 82:7 82:12 technical 80:20 techniques 33:15 33:17,21,23 telemarketing 76:24 tell 5:10 34:16 38:25 60:16 87:25 telling 57:3 94:19 ten-minute 80:6 tennis 53:3 term 72:16 74:17 75:5 terms 33:3,4 38:8 53:7 59:18 62:7 87:5 95:4,17 terrorism 12:5 test 40:18 testified 4:5 86:5 testifying 5:8 testimony 83:13,15 97:8 100:13	testing 90:18 texture 50:7 Thank 85:13 86:12 89:13 96:15 theme 18:23 themes 12:6 thermals 27:17 They'd 46:19 thick 51:22 thing 12:13 19:19 24:6,8,13 31:4,18 33:15,24 34:23 38:18 39:6,13 41:5 45:25 46:17 46:18 47:3,7 50:15 51:21 53:6 55:4 58:12,13,18 59:24 61:8 67:4 67:11,18 68:16,22 69:8,10 71:13 72:7 73:13 76:7 76:13,24 78:16 79:7 82:23 83:16 83:24 87:15 94:3 94:12 things 10:5 12:10 15:6 16:22 20:17 34:10 47:25 59:12 63:2 79:11 81:5 88:23 think 10:15 16:4 26:17 27:2 29:16 31:25 34:22 37:16 46:21 50:5,21 52:14 55:10,11 59:3 65:18 67:17 67:19 70:19 72:24 73:12,19 79:20 81:20 thinking 73:7 87:8 thinner 51:22 third 37:16 thought 11:23 69:2 69:3,22 71:14 84:24 91:12 92:5 92:9,20 94:2 thousand 38:14	40:14 thousands 22:11 three 12:19 25:22 50:17 85:11 89:24 throw 16:6 30:19 thrusters 34:20 Thursdays 29:24 31:3,9 32:8 tickets 84:11 tighter 60:25 time 7:7,22 8:23 12:2 15:9 21:10 22:18 28:22 29:4 29:15 34:11 39:6 40:18 43:5 56:22 58:2,3,11,17 59:3 60:25 63:8,11,16 65:12,23 66:12 67:5 69:25 71:13 73:21 75:24 76:3 82:10 83:8 84:17 86:3 88:17,19 95:24 96:17 times 27:12 28:12 28:13 48:16 50:17 53:8,10 63:23 85:11 tire 33:22 42:18 tires 41:14 42:22 51:24 62:22 today 83:5,13,15 94:20 told 29:14 42:5 44:3,3,13 87:4 tomorrow 17:19 ton 22:22 top 23:20 25:17 37:14,15,18,21 42:2 tops 27:16 totally 9:11 19:3 61:7,8 75:3 77:24 93:25 94:4 95:8 tough 43:3,3 toughness 50:14 tour 49:16 town 28:8 31:15	46:14 traction 73:25 75:11 trademark 1:2,3 18:3 38:23 trademarked 18:20 trademarks 18:6,8 trained 7:7 29:21 89:21 trainer 89:18,19,22 training 31:6 transcript 97:10 TRANSPERFECT 99:1 travel 50:23 trend 14:19 Tri-state 50:25 trial 1:3 5:4 82:16 98:24 triathlons 44:23 46:5 tried 22:3 38:19 41:2 42:7,24 trimmings 78:6 truck 20:18 true 11:7 88:16 97:10 100:12 truth 5:10,10,11 truthfully 5:6 try 13:16,25 18:3,4 18:14 29:11,12,13 29:15 44:4 46:3 70:21 88:4 trying 13:24 17:3 39:2 47:24 49:6 60:14,19 62:9 72:15 TSIRCOU 3:13 Tuesdays 29:24 31:3,9 32:7 tumblers 13:20 turkey 27:23 turn 56:16 turned 68:4 79:8 79:10,10 turnout 14:2 twice 34:9 50:17	85:10 two 7:20 12:19 15:12,14 18:18 25:23 39:10,20 52:13 73:11 84:17 85:11 90:19 93:8 93:9,9 94:7 type 31:6
U				
U 91:12 U-N-F-U-C-K-W... 16:12 uncomfortable 73:9 underground 24:2 24:13 79:24 underneath 20:6 understand 5:12,18 10:13 59:13 understanding 73:11 understands 24:15 understood 39:20 39:22 84:23 Unfortunately 93:20 unfuckwithable 14:25 15:17,25 16:8 18:13,18 19:16 20:6,22 21:20 UNITED 1:2 units 21:12 22:5,6 upgrade 69:25 use 17:7 21:19 41:19 42:13 43:7 usually 10:4 18:4 24:24 27:11 33:6 49:2,4 50:13 58:8				
V				
v 1:24 2:6 99:4 100:7,21 venture 77:7 85:3 Verizon 77:11 version 18:17				

vibration 43:21	watch 61:16	Whitmyer 2:4 3:4 4:25	wow 17:2	14599 1:25 99:5
video 34:8,15 41:15 41:16 59:18,21,23 61:4	watched 13:22	widely 45:23	wrap 40:15 71:6	16th 37:20
videoed 33:14,23 33:24	watching 15:15	Winsor 3:10 4:23	wrong 39:4	<hr/> 2 <hr/>
videos 29:2,3 33:16 33:17 34:4 36:4 43:2 48:4 59:14 60:23 61:18	way 11:16 28:18 29:21,21 43:8,22 47:7 59:18 60:16 100:16	winter 27:21	<hr/> X <hr/>	2 45:8,9,13 98:15
Virginias 51:3	ways 57:22 79:5 83:18 85:5 88:25 89:3	witness 4:3 54:25 60:6 69:6 70:8 82:25 96:15 97:7 98:3 99:5 100:10 100:13,18	x 1:6,12 79:10 98:2	20 99:23
visited 6:24 50:21	we'll 80:6	woke 12:18	<hr/> Y <hr/>	200 50:11,22,23 52:8,18
visiting 31:16 52:18	we're 16:6,7 42:11	wolves 17:2	Y 4:2 86:4	2007 15:4
voiced 74:3 85:2	we've 31:14	woman 15:12 79:9	yeah 12:7,7,7,8,10 12:12,16	2008 11:20,21,25 15:3 47:13
vote 57:12	weaknesses 59:8	women 15:12,14 42:25	year 8:10 9:9 12:15 20:9 22:21 37:19 54:9 55:10,11,12 55:13 85:11,11 90:8	2009 6:24 8:12,18 15:3 28:21 31:22 37:15,17 39:19 47:20,21 54:10,19 54:19 79:17 95:12
<hr/> W <hr/>	wear 61:19	won 37:13,18 57:14 57:18 82:6	years 7:24 22:20 23:24 39:20,22 44:23,23 46:6 55:8 76:19,22	2010 8:14,15 9:2 16:5 21:23 22:2 31:23 32:10 34:7 36:17 37:15,17 55:9 57:21,22 61:2,17 70:23 84:5 85:6,7,8 86:20 87:20 95:12
waive 86:8	wearing 12:21 60:3 60:21 90:24 91:8	woo-woo 20:20	yoke 52:4	2011 55:9 56:23 57:20 59:17 62:10 65:10,12,13 66:25 67:8 70:13,13 71:4 75:9 91:19 91:20 92:20 95:2
Wake 17:11	website 29:9,10	word 9:8,10 14:21 14:22 16:6,9,10 17:5 18:3,12 19:15 20:14 24:15 25:11 34:6 41:4 42:13 58:18 66:5 71:7 78:16 80:3	yolk 44:18	2012 18:13 65:11 65:11 66:7,8,10 70:14 75:10 91:21 91:22 92:22
walked 67:25	week 34:9,9 75:19 89:25	words 14:13 18:2	York 2:7 5:22 28:22 97:2 99:2,2 100:3,5,9	2013 20:3 71:22 72:3 92:15,25 98:23
walks 9:25	weekend 22:25	wore 54:20 61:20	young 33:2,6	2014 11:9
wall 40:21 45:14 46:13,19 47:10	weeks 7:21 80:13	work 15:10 63:2 80:9 89:17	younger 32:23 33:7	2015 1:18 2:5 97:18 99:4 100:19
want 8:6 24:7 28:9 29:12 42:21 46:3 46:25 47:6 61:6 64:5 66:16,18 68:5 78:21 81:2,9 82:7 83:22,23 86:7 87:15,16 89:9 90:21	weight 25:23 29:3 34:2,12,13 81:6	workouts 80:19 81:7	Youngstown 6:2	212 99:3
wanted 9:11 39:8 42:4 43:10 44:11 48:7,7 75:16,18 75:18,20 87:4,10	weights 33:4 45:17 50:10 59:11	worked 76:12 89:16	<hr/> Z <hr/>	216 99:2
wants 27:18	weird 47:5	working 15:9,12 82:2 87:23	Z 4:2 86:4	25 39:22 76:19,22
wasexamined 4:4	went 7:16 12:9 13:22 17:14 18:13 21:24 23:10 29:9 29:17 30:24 37:17 37:19 48:19 52:7 55:2,11 57:22 63:13,13 72:7,18 82:12,12 83:17,25 87:17 88:24 90:7	workout 31:10 34:18 59:19,21,23 62:25	Zealand 48:17	29 1:18 2:5 99:4
washed 87:21	weren't 58:3 63:10 65:19 69:25 71:9 91:23,25 94:5	workouts 80:19 81:7	<hr/> 0 <hr/>	<hr/> 3 <hr/>
Washington 32:18	West 51:7	works 59:19	000054 56:17	3 53:18,25 98:16
wasn't 9:10 14:9 28:23 41:8 57:24 58:16,23 59:13 62:10 63:14,15 65:20 68:19,25 70:16 71:2,13,16 73:13 84:10,14 87:12 89:21 92:23	whatsoever 94:17	world 19:25 25:3 25:10 50:17	06901 2:5 3:7	
	wheel 44:5	worldwide 26:13	<hr/> 1 <hr/>	
	WHEREOF 100:18	worn 91:3	1 21:14 35:5,6,11 98:13	
	wherewithal 22:5 75:16	worry 44:14	10017 99:2	
	whispering 24:4	wouldn't 25:10 50:8 61:12 63:24 83:20 96:8	101 7:17	
			10451 5:22	
			11 61:17	
			11:33 85:16	
			12 66:25 71:4	
			12:35 86:3	
			12:45 96:17	

30 10:20
300 50:12 52:10,19
 90:2
35 98:13
36th 3:15

4

4 53:21 54:14 67:12
 98:4,17
400 52:10 90:3
400-8845 99:3
44-years-old 5:24
45 10:20 98:15
45th 99:2

5

5 55:23,24 98:18
50 50:11
515 3:15
53 98:16,17
5300 21:12
55 59:25 60:12
 98:18
59 60:2

6

6 64:7,9,21 70:11
 70:12 98:20
600 2:4 3:6
64 98:20,21

7

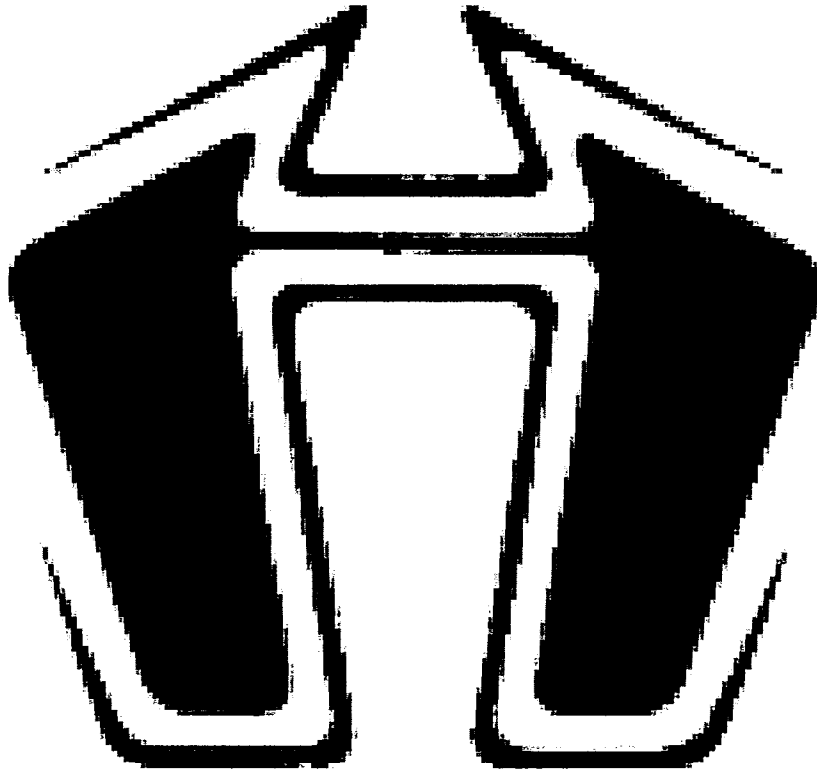
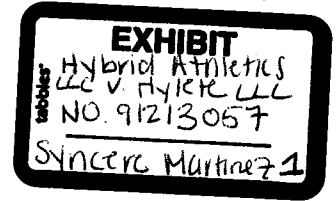
7 64:14,15 65:2
 68:7 98:21
7:30 20:3
71 98:22

8

8 71:19,20 98:22
800 5:21
82 98:24
86 98:5

9

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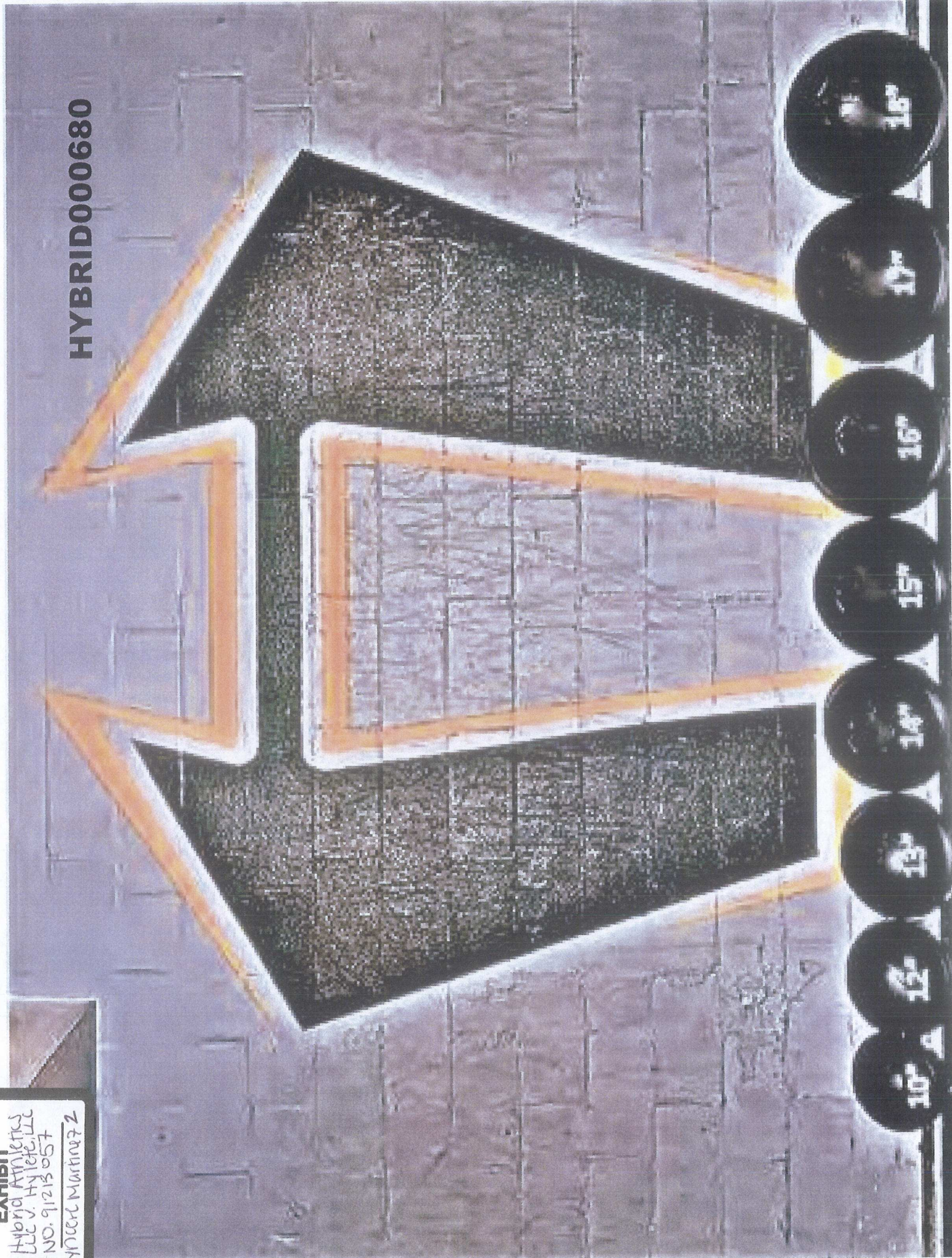


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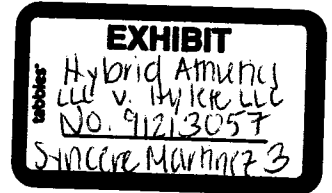
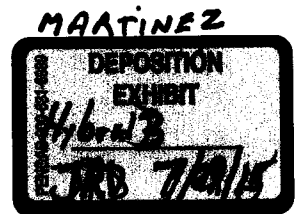
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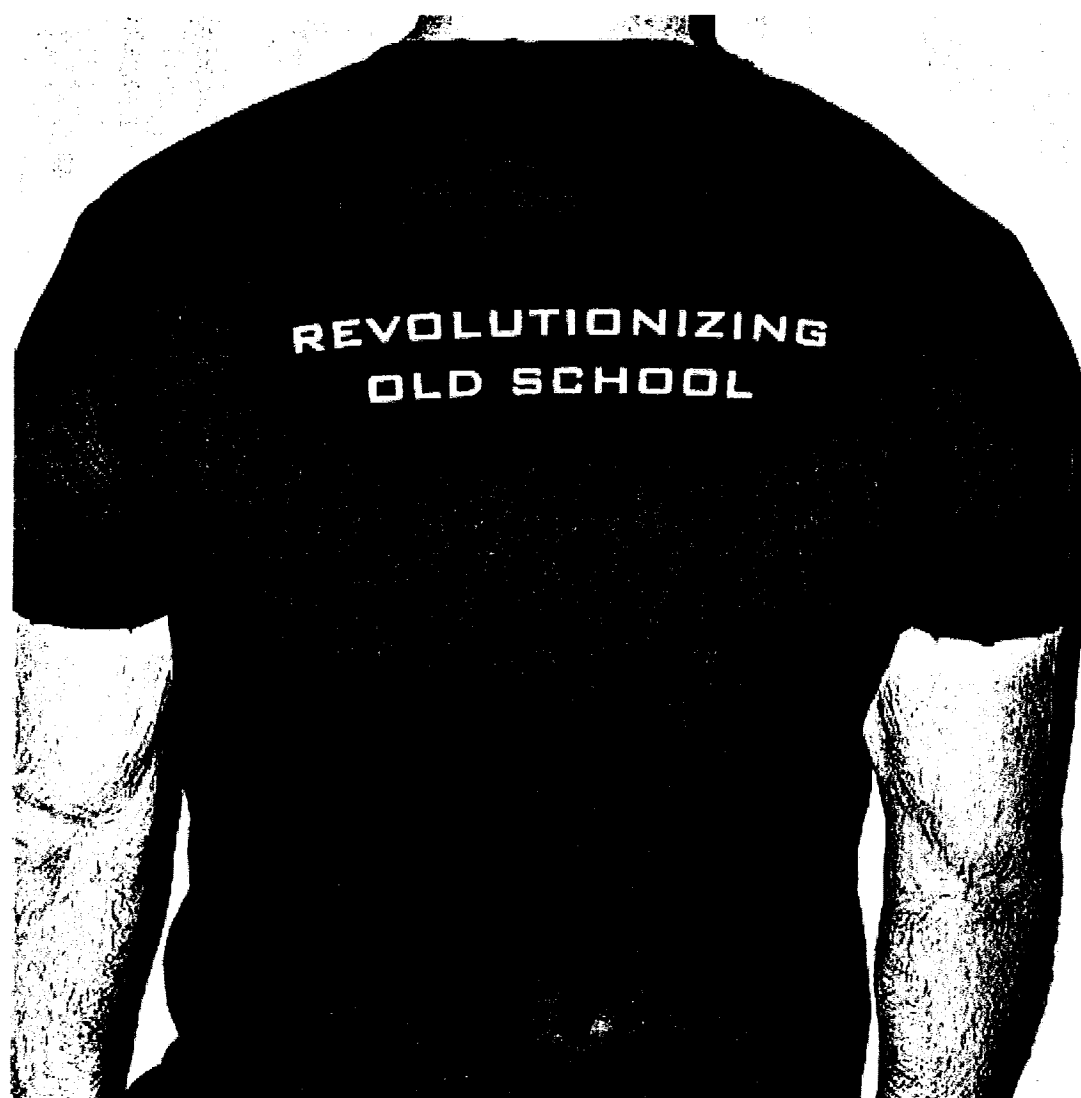
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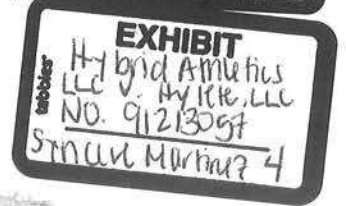
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Hybrid
v.
Hylete
No. 91213057

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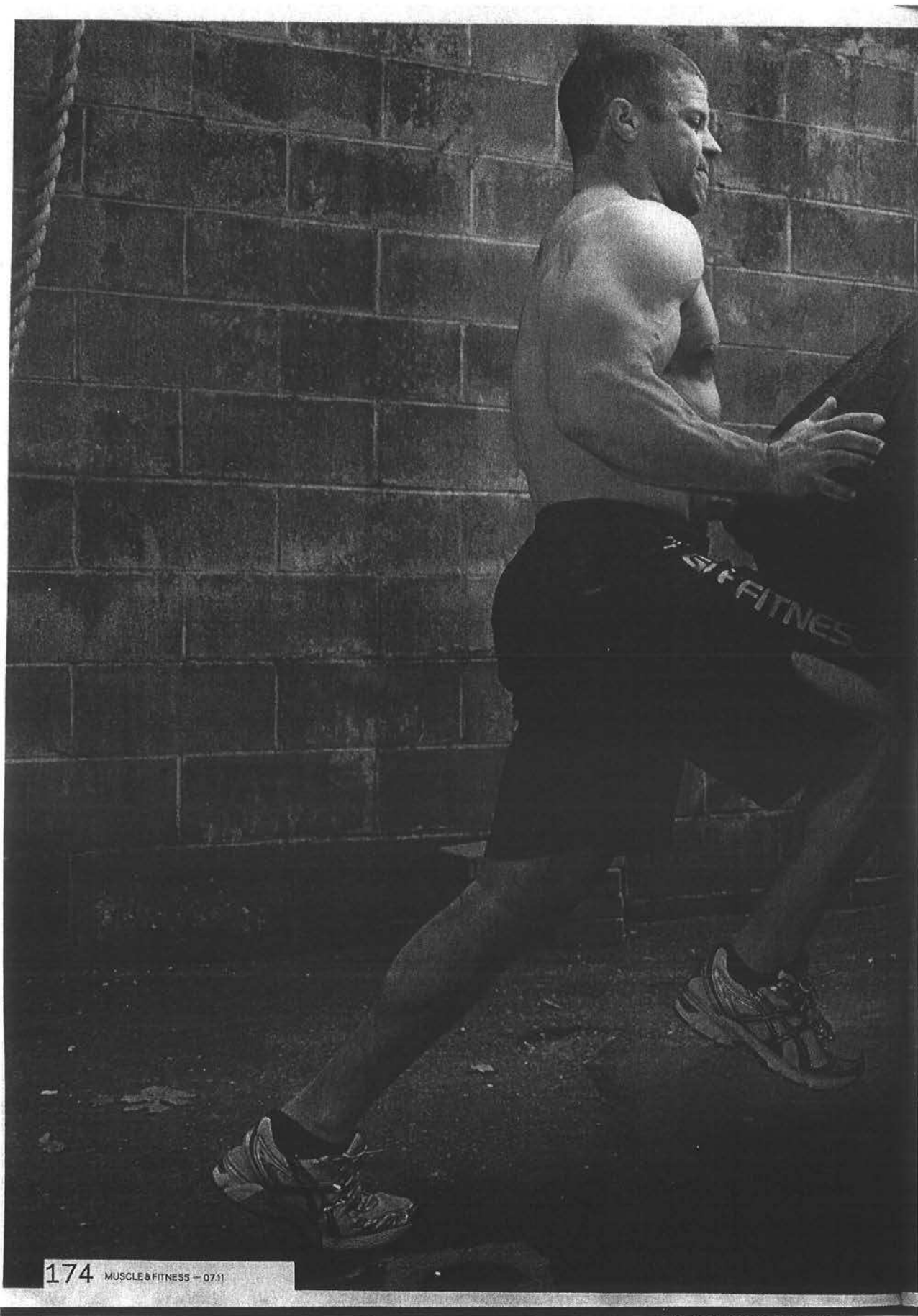
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THE KING OF CROSSFIT

ROB ORLANDO WANTS YOUR
GRANDMOTHER TO FLIP TIRES.
HE MIGHT JUST BE ONTO SOMETHING.

BY ROB FITZGERALD

PHOTOGRAPHY BY ROB TRINGALI

M&F ELITE

Orlando's gym,
Hybrid Athletics in
Stamford, CT, is a
CrossFitter's paradise.

"I WAS A SLAVE TO
THESE PEOPLE—THEIR
BABYSITTERS, THEIR
DOGS THAT WOULDN'T
STOP BARKING, THEIR
KIDS. YOU CAN NEVER
TRAIN ANYONE THE WAY
YOU WANT TO."

Rob Orlando weighed less than 150 pounds when he graduated from high school. He played some football and worked himself to the bone in the gym, but recruiters aren't lining up for scrawny 5'8"

kids from Connecticut, regardless of how hard they compete or how much they love the game. For Orlando, it just wasn't happening. A lifelong love affair with training, however, was already well underway.

What college scouts never saw was what Orlando forged on the stone masonry and concrete crews where he labored throughout junior high and high school: his work ethic, tenacity, and willingness to take risks, both professionally and with massive weights over his head.

"I worked with this 80-year-old Italian stone mason who said cement mixers made you lazy," he says. "So every day, I was mixing cement in a wheelbarrow with a hoe as fast as he could lay brick, and I was loading it up and down scaffolding. I think that made me a little different from most teenagers."

KEEP PRESSING

The gym was a constant through high school and his college years at the University of Connecticut—where Orlando majored in exercise science—but there was always a plan, or so it seemed. An alternate track. An intention—one undefined for more than a decade—to do something more with what he loved, as opposed to simply remaining on some predetermined road to something he didn't want to do.

He kept getting stronger, adding weight at the rate of ten pounds a year. He kept working his ass off, never missing a workout, putting heavier and heavier weights over his head, to the point where he'd become a specialist in the field. He didn't know what the hell he wanted to do with his life, but he trained throughout college and the years that followed—including a short-lived suit-and-tie stint in medical sales—as though he wouldn't amount to anything if he didn't.

The personal trainer route came next, and Orlando quickly realized it wasn't what he'd envisioned. "I had an

in-home training company in Stamford, where I was traveling from house to house training people," he says. "I did that for five years, and I had the realization that at some point, I was going to take on a client who was younger than me, somebody who'd eclipsed what I was earning and who could afford my rate, and I didn't like that. I was a slave to these people—their babysitters, their dogs that wouldn't stop barking, their kids. You can never train anyone the way you want to."

INTERNET LEGEND

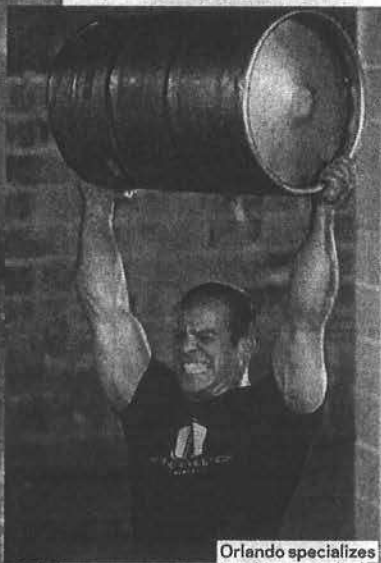
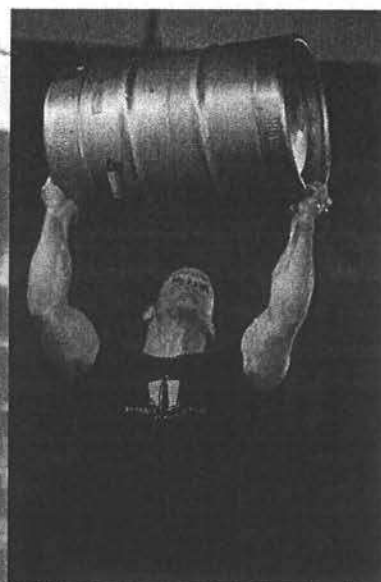
If you quit mixing cement in your wheelbarrow, you don't get paid. Quit carrying the yoke in a strongman competition, and maybe you won't pass out, fall flat on your face, and get scraped off the field like Orlando did in 2006. Take the easy way out, however, and you don't end up on YouTube cranking out reps of overhead presses with the fabled Inch Dumbbell—a thick-handled monstrosity most guys can't even budge off the ground, much less press overhead with a broken nose and fractured eye socket.

The Inch Dumbbell went up, and so did everything else Orlando wrapped his hands around: 365-pound axle cleans, massive log presses. North American weight class strongman records fell left and right whenever he competed. With all of it, every size- and logic-defying feat of strength was catalogued for posterity on YouTube, the videos taking on a life of their own on myriad fitness message boards and forums across the Internet.

"I was going back to the soccer moms I was training," Orlando says, "and what I was doing in these contests had absolutely no relevance to them. I was training with Derek Poundstone and working out under the same axle for the same sets, and I didn't have anyone to share it with, so YouTube became my outlet. That was the only place I had any acceptance or notice."

HYBRID DREAMS

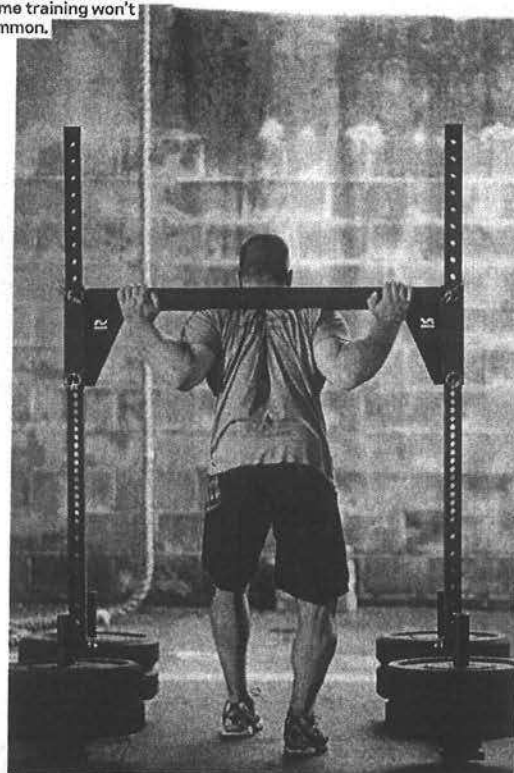
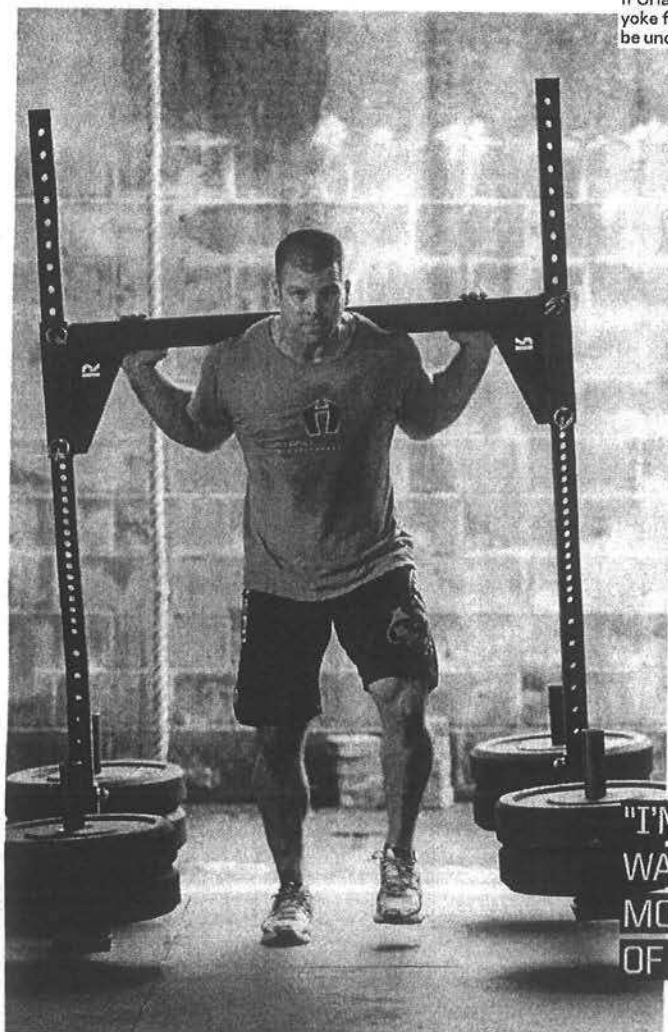
The problem with notice was that Orlando didn't know he'd been noticed by anyone, until a fortuitous breakfast with a client who didn't feel like training one particular morning. Frustrated



Orlando specializes in taking so-called odd objects and heaving them over his head.



If Orlando gets his way, yoke frame training won't be uncommon.



"I'M TRYING TO INTRODUCE A NEW WAY OF TRAINING—STRONGMAN MOVEMENTS—TO THIS HUGE GROUP OF PEOPLE."

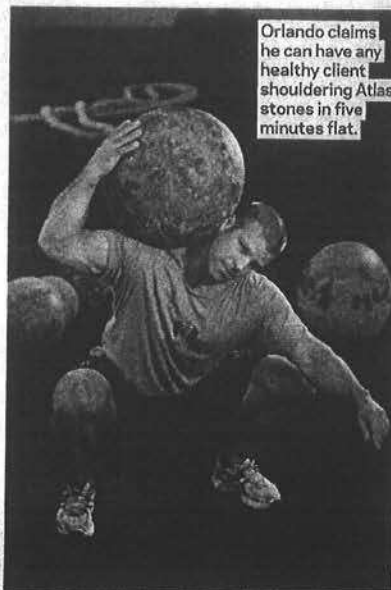
with his in-home training business and the limitations it represented to his still unformed—yet still pervasive—life plan, he vented to his client, a wealthy investment specialist.

"The guy says to me, 'You complain about every gym you've ever trained in. If you think you can do it better, what's stopping you?' I told him fifty grand was what was stopping me, so the guy writes me a check for fifty grand, and my jaw hits the floor. It was time to go find some space and make it happen."

Hybrid Athletics, his combination CrossFit/strongman gym in a decidedly un-Connecticut section of Stamford, is Orlando's dream come into focus. It's where he trained to finish a surprising 22nd in his first CrossFit Games in 2009, despite being stereotyped as a

one-dimensional strength specialist who eschewed endurance events. It's where he transformed himself into a favorite for the 2011 Games and where he trains everyone from stockbrokers to grandmothers. Most important, it's where he says he's going to change the way the world works out.

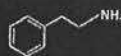
"We affiliated with CrossFit back at the end of 2008, and it's the best thing I've ever done," he says. "I know people love to knock CrossFit, but CrossFitters are so open to trying new stuff. They're the polar opposite of what so many other fitness communities are like in that sense. I'm trying to introduce a new way of training—strongman movements—to this huge group of people. It's a community that can influence and change the landscape of the fitness culture."



Orlando claims he can have any healthy client shouldering Atlas stones in five minutes flat.

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HYBRID000058

A perfect hybrid:
Orlando works with
CrossFit, combining
heavy lifts and
traditional cardio.

"I'M TRYING TO STRIKE
A BALANCE WITH ALL
THE DIFFERENT THINGS
I'M DOING, AND SHARE
WHAT I LOVE."

STRONGMAN STARTER KIT

At Hybrid Athletics, Rob Orlando's specialty is turning on moderately fit Average Joes to the benefits of serious strongman training. If you can bench and squat your body weight for reps and deadlift 275 pounds, try this simple strongman medley Orlando uses with his beginner clients. Complete four rounds of this circuit as fast as you can.

EXERCISE	REPS
400-pound tire flip	4
125-pound (per hand) farmer's carry	75 FEET
140-pound Atlas stone to the shoulder	4

If you're ready for one of Orlando's legendary CrossFit workouts, see if you can beat the 18:09 mark he set with the program below.

EXERCISE	REPS
800 meter run	1
315-pound back squat	10
800 meter run	1
225-pound front squat	10
800 meter run	1
135-pound overhead squat	10

MOVEMENTS FOR THE MASSES

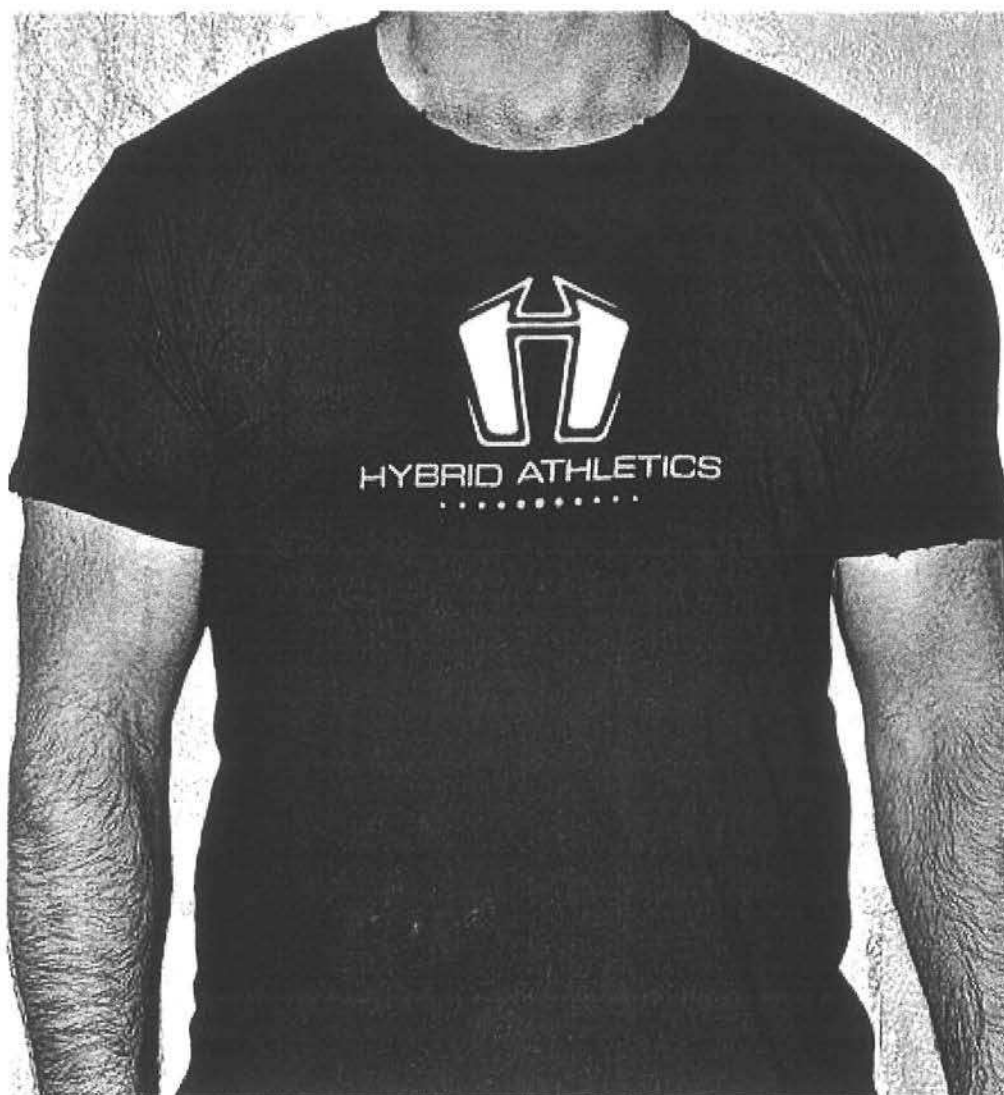
Orlando says strongman training is for everyone, and he means *everyone*. The key is scalability. Having a point of entry so everyone can be included in a greater community setting, with nobody shut out. "People want to use stones and logs and all the other great strongman stuff, but they can't because all the other conventional equipment out there is too heavy for them to start using, even without any weight on it." After seeing this limiting factor time and time again with clients, Orlando partnered with a metal fabricator, designing his own Hybrid Athletics equipment line that features "strongman products for the masses."

"We've got a 61-year-old woman who comes in here," he says, "and I started her off with a 30-pound stone on her shoulder, just to break down her fear. Five minutes later, she was up to a 60-pound stone. Is that not strongman? We're opening up a toy chest to people who would otherwise be denied."

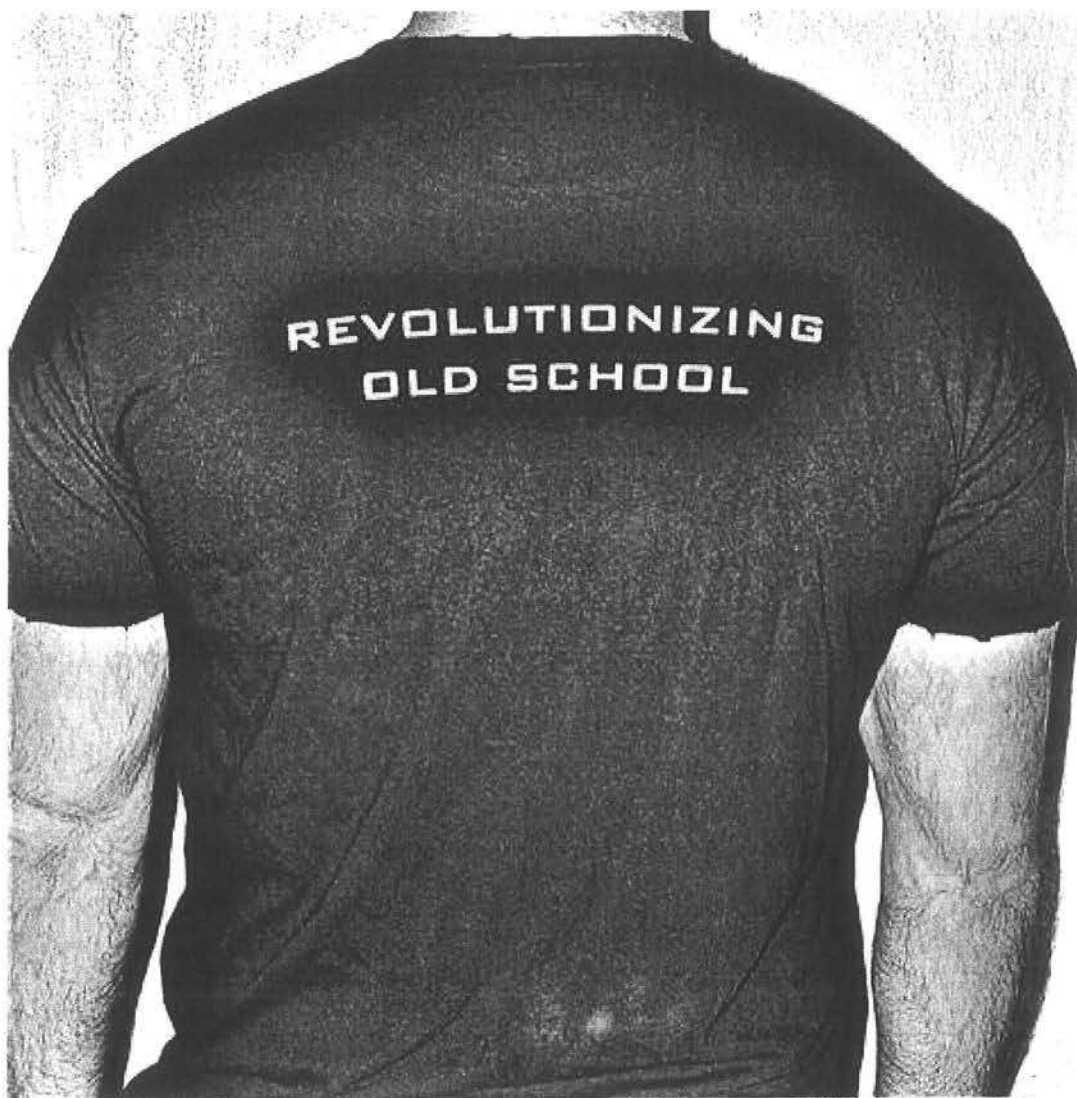
It's a movement within a movement.

Love it or hate it, CrossFit boasts a massive international community, so when you make waves within its ever-expanding world—and Orlando certainly does—you're influencing the industry as a whole. That's his destiny, the one he knew he was headed for, yet couldn't quite put his finger on, all those years ago with his wheelbarrow, his hoe, and his 97-pound bags of cement. For Orlando, weights keep going up, only this time, he's shouldering the burden of changing the way we train. His new tattoo showing the word *Balance* across his rib cage—only three weeks old at the time of the photo shoot for this article—is telling.

"For me, everything is about balance. I'm trying to find it on so many different levels—as a father, a husband, a business owner, an athlete, an entrepreneur, an engineer, and a creative guy. I'm trying to strike a balance with all the different things I'm doing, and share what I love—teaching strongman and getting everyone involved—is exactly where I've always wanted to be." **M&F**

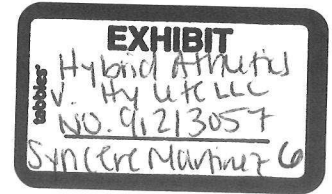
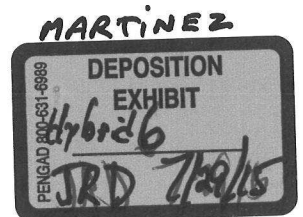
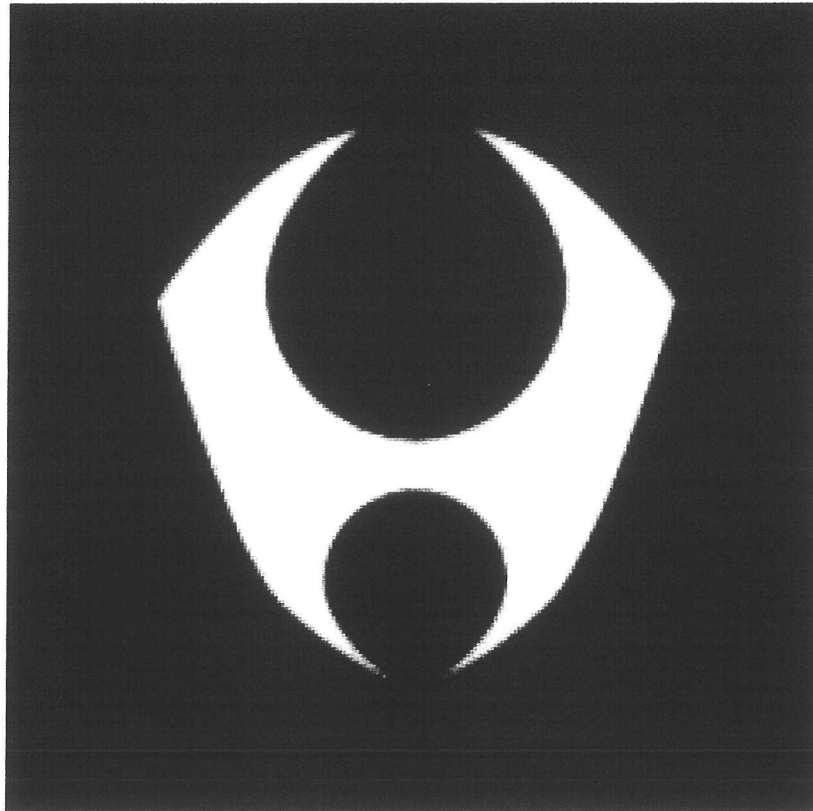


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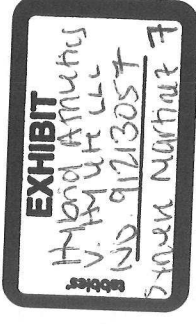
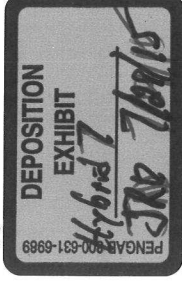
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Hylete
No. 91213057



Hybrid
Hylete
No. 912(3057

MARTINEZ



HYLETE

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From: SynCFH <syn@crossfitharlem.com>
Sent: Tuesday, December 24, 2013 7:46 PM
To: Conanrules1@gmail.com
Subject: Hylete...

Rob something has to be done with Hylete! It's a blatant rip off of the Hybrid Athletics brand!

Not sure what can be done but the "H" and the term Hybrid Athlete is something you have created in the CrossFit Community.

I'm not sure what can be done but the fact that they are flooding the Community with their Brand over yours is disrespectful in my opinion.

I'm sure they didn't contact you or discuss anything with you which makes the situation even worse.

The CrossFit Community has been in my corner and alert me everytime anyone tries to copy any image of mine or catch phrases.

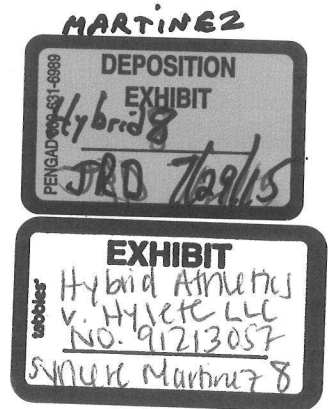
I'm here to support you in this situation because I know what you've done for the CrossFit Community and for me personally.

This has to be addressed!

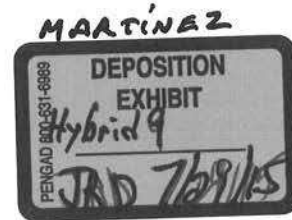
Let me know how I can help!

Syn Martinez
Owner
CrossFit Harlem
212-365-0404

Hybrid
✓
Hylete
No. 91213057



Hybrid
Hylete
No 91213057



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS, LLC,

Opposer,

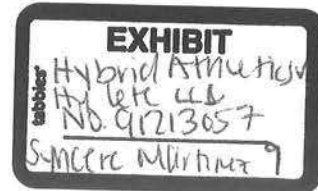
v.

HYLETE LLC,

Applicant.

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Opposition No. 91213057



OPPOSER'S NOTICE OF TRIAL DEPOSITION

PLEASE TAKE NOTICE THAT pursuant to Trademark Rule 2.123 and Federal Rule of Civil Procedure 30, Opposer Hybrid Athletics, LLC. ("Opposer"), by its attorneys, will take the trial deposition by oral examination of Syn Martinez, CrossFit Harlem, 2340 5th Avenue, Unit S-13, New York, NY 10037, to be held at the offices of Whitmyer IP Group, LLC, 600 Summer Street, Stamford, CT 06901, on July 29, 2015, commencing at 9:00 a.m. The deposition will be taken before a notary public or other officer duly authorized to administer oaths, and will be recorded by stenographic and/or video graphic means. The deposition will continue from day to day until completed.

All counsel of record are invited to attend the deposition and examine the deponent in accordance with applicable rules.

HYBRID ATHLETICS, LLC

July 21, 2015

/s/ Michael J. Kosma
Wesley W. Whitmyer, Jr.
Michael J. Kosma
Whitmyer IP Group LLC
600 Summer Street
Stamford, CT 06901
Tel. (203) 703-0800
Facsimile (203) 703-0801
Email: litigation@whipgroup.com
mkosma@whipgroup.com

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing OPPOSER'S NOTICE OF TRIAL DEPOSITION was served by electronic mail and first class mail, postage prepaid on the Correspondent for the Applicant as follows:

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221
kyri@tsircoulaw.com

July 21, 2015
Date

/s/ Joan M. Burnett
Joan M. Burnett